Iowa General Assembly

2012 Committee Briefings

Legislative Services Agency – Legal Services Division https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: December 11, 2012 | November 13, 2012 | October 17, 2012 | September 11, 2012 | August 14, 2012 | July 10, 2012 | June 12, 2012 | May 8, 2012

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at http://www.legis.state.ia.us/, or from the agency connected with the meeting or topic described.*

ADMINISTRATIVE RULES REVIEW COMMITTEE

December 11, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

DEPARTMENT OF ADMINISTRATIVE SERVICES, *Confidential Employees,* 11/14/12 IAB, ARC 0460C, ADOPTED.

Background. Iowa Code §8A.412 provides that a confidential employee is exempt from the merit employment system; it is one of 24 legislatively created exceptions to the application of the merit system. In 2011, the department proposed to expand the rules definition of the term "confidential employee" to include state employees who work in personnel offices. That proposal was dropped and in the fall of 2012 the department adopted an alternative proposal which defines a confidential employee as an employee who is in a confidential relationship with a director, a chief deputy administrative officer, a division administrator, or a similar position, and is a part of the management or legal team of that top-level administrator.

Commentary. Department representatives stated that confidential status would be determined on an agency-by-agency basis, in consultation with agency heads. Affected personnel would not include labor contract covered positions. The representatives noted that in the case of the Department of Administrative Services, about 3 percent of the positions would be affected.

Opponents contended that any expansion of the statutory term should be done through the legislative process, not rulemaking. Opponents also questioned the need for the rule, since no problems with the current administration were presented. Opponents also protested that the application of the rule was vague and lacked standards.

Committee members were split in their deliberations. Some members were concerned over the potential impact the rule might have on the merit system. Other members felt that the concerns were overstated and that the rule would be limited in its application. A motion to refer the rulemaking to the General Assembly for further review was adopted.

Action. General referral to the General Assembly.

DEPARTMENT OF EDUCATION, *Preprofessional Skills Test for Admission to Teacher Preparation Programs; Subject Assessments for Teacher Candidates,* 11/28/12 IAB, ARC 0476C, ADOPTED.

Background. This rulemaking implements 2012 Iowa Acts, Ch. 1119 §39, (SF 2284), relating to pretesting of candidates for admission to teacher preparation programs. Whereas, presently teacher preparation programs are required to administer a "basic skills test" to admission candidates, the new legislation requires that the test be "a preprofessional skills test offered by a nationally recognized testing service." The new legislation also imposes a new requirement that, prior to completion of the program, each student in a teacher preparation program achieve scores above the 25th percentile nationally on an assessment that measures pedagogy and knowledge of at least one subject area. The department has designated the Praxis II tests to meet this requirement. The rulemaking is effective January 2, 2013.

At the committee's September meeting, committee members expressed concern that the January 2 effective date for the

rule will unfairly impact students who will be undergoing testing soon, but after that date, and who have not had adequate time or training to prepare for the new standard. The department director replied that the immediate effective date of the underlying legislation required him not to delay its implementation. Public comment has been received echoing the concerns raised at the September meeting.

Commentary. A representative of the department summarized the rulemaking, and the department director discussed some additional matters. The director explained that another testing option which would satisfy the requirements of SF 2284, the edTPA test, would be available in fall 2013, and the department would implement that option by rule at that time. The director reviewed the department's process for this rulemaking, noting that the department had sought substantial stakeholder input over the last five months and made changes in response to concerns that had been raised. In response to concerns that the rulemaking would unfairly impact students who will be testing soon, the director stated that because the underlying legislation had an immediate effective date, the department should have implemented the new standards in July, but had waited in order to accommodate students testing in the fall and to receive further feedback. He noted that other parts of SF 2284 had later effective dates, while these testing requirements did not. Public comment was received from a member of the state Board of Education and the former Massachusetts education commissioner, who expressed support for the rulemaking, and from the former director of assessment at UNI, who urged a delay in implementation for the sake of fairness to current students. Committee members sought clarification as to some of the technical aspects of the new tests. Some members shared the concern about the impact of the January 2 effective date on current students, but otherwise expressed support for the rulemaking. They noted that the effective date issue could be addressed in the next session of the General Assembly. Other members suggested that the 25th percentile threshold is too low.

Action. No action taken.

SECRETARY OF STATE, *Mechanics Liens,* 11/28/12 IAB, ARC 0464C, ADOPTED.

Background. 2012 Iowa Acts, Ch. 1105 (HF 675), as amended by 2012 Iowa Acts, Ch. 1138 (HF 2465), creates an online central state registry for mechanics liens, effective January 2, 2013. The intent was to make the process transparent to buyers, sellers, and all contractors. The mechanics' notice and lien registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property. A general contractor for residential construction who fails to post a notice of commencement of work on the registry within 10 days following commencement of work is not entitled to a lien or other remedies. The procedure is similar to that currently in place for the Uniform Commercial Code.

Commentary. The notice requirements identify the possibility that a lien could, in the future, be filed for work or materials that had not been paid for by the contractor. Thus, the buyer of a property is forewarned of this potential problem. At issue is that a contractor who uses neither subcontractors nor suppliers must still file a notice. Stakeholders contended this places an unnecessary burden on these contractors and questioned whether it is supported by statutory authority. Committee members expressed a willingness to delay this portion of the rule; however, agency representatives warned that such a delay would impact the entire program of registration and notice. The agency representatives agreed to seek legislative action on this matter and in the meantime agreed not to require registration by a contractor using neither subcontractors nor suppliers. A motion to refer the rulemaking to the General Assembly for further review carried.

Action. General referral to the General Assembly.

Next Meeting. The next regular committee meeting will be held in Statehouse Committee Room 116, on Tuesday, January 8, 2013, at 10:00 a.m. with an additional tentative meeting on Wednesday, January 9, 2013, at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE
November 13, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS), *Human Resources Enterprise*, 10/17/12 IAB, ARC 0401C, ADOPTED.

Background. This rulemaking is part of the department's ongoing comprehensive review of its existing rules. This portion of the review relates to the Human Resources Enterprise within DAS. Items under notice relating to the Information Technology Enterprise (ITE) were not adopted; the department will revisit the ITE rules at a later date. Changes made in this rulemaking include amending certain definitions to reflect existing statutes, eliminating unnecessary terms, and making various technical and grammatical changes.

Commentary. A representative of the department summarized the rulemaking and noted various changes made since the rulemaking was put on notice. Committee members expressed concern about language in items 44-46 of the rulemaking which provide that an employee may be subject to a reduction in force before an employee with fewer retention points if the employee with greater retention points received a rating of less than "meets expectations" on their most recent performance review or had a disciplinary suspension or demotion within the last 12 months. Approval of the director of DAS would be required for such an action.

Some committee members expressed concern that "meets expectations" is not defined in the rule and that a supervisor might use this process to wrongfully target and remove a long-time employee based on a single performance review. Committee members stated that the retention point system is meant as a form of job protection, and these provisions would undermine it. The representative explained that employees would be protected from such a scenario because "meets expectations" would be based on a preexisting point system used for performance reviews, and performance reviews are subject to a grievance process before the Public Employment Relations Board. The representative emphasized that this process could occur only during a reduction in force and is not mandatory even then, and can only occur with the approval of the director of DAS. The representative also noted that no public comments had been received about this provision. Committee members suggested that the lack of public comment may be due to this change being only one small part of a large and technical rulemaking. Committee members also questioned whether it was appropriate to include a policy change such as this in a rulemaking which is mainly technical in nature. Other committee members expressed support for these provisions, stating that they would allow a supervisor to retain the best employees during a reduction in force, instead of being forced to retain an ineffective employee over an effective one. It was noted that these provisions would apply to both new and current employees, although they would not apply to employees subject to collective bargaining. A motion was made to delay the effective date of items 44-46 until the adjournment of the next session of the General Assembly. The motion failed.

Action. No action taken.

IOWA FINANCE AUTHORITY (IFA), *Qualified Allocation Plan,* 10/31/12 IAB, ARC 0427C, ADOPTED.

Background. These rules were initially reviewed by the committee in October. The federal government established the Low-Income Housing Tax Credit program in 1986. IFA is the state agency which allocates these housing tax credits in Iowa. Each year the program is revised; the federal Internal Revenue Service (IRS) annually allocates housing tax credits on a per capita basis to each state based on population.

Commentary. For 2012, IFA's per capita tax credit authority was $6,549,663. Returned tax credits from previous tax credit years may also be available for allocation. These tax credits provide a dollar-for-dollar reduction to an investor's tax liability on ordinary income. Developers of affordable housing sell the housing tax credits to investors as a way to finance the projects and keep rents low for eventual tenants. The IRS oversees the program on the federal level and provides general guidelines for it.

IFA also sets its own rules that are included in a Qualified Allocation Plan (QAP), which is annually updated. A portion of the credits are reserved for five set-asides: Nonprofit (10 percent), Community Housing Development Organization (5 percent), Preservation (10 percent), Rural (10 percent), and Rural Development Preservation Demonstration (returned credits). A developer may submit as many projects as the developer chooses; however, IFA will not allocate more than $1,200,000 in tax credits to projects being developed by a single developer.

Action. No action taken.

PAROLE BOARD, *Voting Requirements,* 10/31/12 IAB, ARC 0421C, ADOPTED.

Background. Iowa Code §904A.4 states that the board shall interview and consider inmates for parole and work release. The statute provides that a majority vote of the members is required to grant a parole or work release. The board is made up of two full-time members and three part-time members. Board procedures provide for inmate interviews by three member panels, following various types of evaluation. All five members of the board must vote in favor of parole.

Commentary. This amendment would require the votes of only three members to grant a parole. The chairperson of the board stated that new evaluations provides greater security that an inmate is an appropriate candidate for parole. The chairperson also stated that in over 99 percent of the past cases the decisions were unanimous. The chairperson noted that the three-member vote was set out in the statute itself and that under the current process two of the voting members did not participate in the interview.

Several members of the public expressed concern that the new rules would make parole easier to attain and would return dangerous criminals to communities. Committee members shared these concerns; the board chairperson assured the members the reviews will remain thorough and the standards will remain high.

Action. No action taken. Rule is final.

PROFESSIONAL LICENSURE DIVISION, *Cosmetology Salons,* 10/31/12 IAB, ARC 0437C, NOTICE.

Background. The division proposes a rewrite of existing rules setting physical standards for schools of cosmetology. Generally, the rewrite establishes the prescribed minimum physical and equipment requirements; it also reduces the number of instructors required if the school is offering only clinic services or theory instruction to fewer than 15 students.

The new rules also establish standards for a cosmetology school to teach only a single course curriculum.

Commentary. Under the new rules schools that teach only one course of study for nail technology, esthetics, or electrology must have a minimum floor space of 1,000 square feet and, when the enrollment in a school exceeds 10 students, additional floor space of 30 square feet is required for each additional student enrolled in the school. Stakeholders contended this type of new, smaller school would grow in number until they are impossible to regulate. They also noted that the 1,000 square foot requirement is a significant reduction from the 3,000 square feet required for existing schools.

Action. No action taken.

PUBLIC EMPLOYMENT RELATIONS BOARD, *Fees of Neutrals,* 10/17/12 IAB, ARC 0395C, ADOPTED.

Background. This rulemaking raises the maximum rate qualified arbitrators and teacher termination adjudicators are entitled to charge from $800 per day to $1,200 per day. This rate is set by the board pursuant to Iowa Code §20.6(3). This rate has not been updated in five years, and the board believes it is less than the going market rate and insufficient to retain and attract qualified neutrals. At the committee's September meeting, some members expressed concern that the proposed rate is excessive.

Commentary. A representative of the board explained the rulemaking and noted that these costs are split equally between the two parties and that not every neutral will necessarily charge the maximum rate. Committee members asked if the increase could result in all of the neutrals raising their rates to the new maximum, given that they all currently charge the maximum of $800. The representative stated that some neutrals indicated they would remain at the current rate, while others indicated they would increase their rates by varying amounts. Committee members asked how rates are regulated in surrounding states, and the representative explained that no neighboring states have maximum rates, which has resulted in Iowa's rates being 25-50 percent below the regional market rate. The representative stated that there are currently 49 neutrals listed in Iowa. Committee members asked what the qualifications are to be a neutral. The representative explained that the qualifications are not listed in the Administrative Code, but include education requirements, relevant knowledge and skills, a minimum number of years of experience or decisions or awards issued, and submission of a writing sample. A training program is also available as needed.

Action. No action taken.

REVENUE DEPARTMENT, *Certain Inputs Used in Taxable Vehicle Wash and Wax Services,* 10/17/12 IAB, ARC 0403C, ADOPTED.

Background. This rulemaking implements 2012 Iowa Acts, ch 1121 (SF 2342), §13, which provides for the taxability of certain inputs used in taxable vehicle wash and wax services. Under this new rule, for bills received on or after May 25, 2012, sales of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code §423.2(6) are exempt from tax.

Commentary. After a department representative explained this rulemaking which implements a tax exemption for car washes, committee members expressed concern about the proposed definition of "secondary vehicle wash and wax facility". The definition provides that a facility which has a primary purpose other than vehicle wash and wax services, but which also provides such services, will only receive an exemption for electricity and water used to provide those services. The rule places the burden on a facility to prove it is not a secondary vehicle wash and wax facility. Committee members asked what kind of proof would satisfy the rule and where such proof would be submitted. The representative was unsure and said the department would work with the industry to implement this standard. Committee members also expressed concern as to how this rule would affect a facility while selling minor incidental goods such as through a vending machine. A motion was made to refer the rulemaking to the General Assembly for further consideration. The motion carried.

Action. General referral.

Next Meeting. The next regular committee meeting will be held in Statehouse Room 116, on Tuesday, December 11, 2012, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE
October 17, 2012
Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

ADMINISTRATIVE SERVICES, *Definition of Confidential Employees*, 09/05/12 IAB, ARC 0327C, NOTICE.

Background. Iowa Code §8A.412 provides in part that: "The merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established…." This general statement is followed by 24

specific exclusions; one of these exclusions is for "all confidential employees." A confidential employee is an at will employee serving at the pleasure of the appointing authority.

Commentary. This proposal would amend the current definition of the term "confidential employee" to include an employee who is in a confidential relationship with a state agency director, chief deputy administrative officer, a division administrator, or a similar position, and is a part of the management or legal team of that top-level administrator. Under this rule, a confidential relationship means a relationship in which one person has a duty to the other not to disclose information. Several state employees questioned this expanded definition, contending that it is vague and an improper expansion of the statutory exemption. Opponents of the rule contended that restrictions on merit system coverage should come from the Legislature.

Department representatives noted that the current definition in rule carries an objection that the committee had placed in 1986, and that in part the revision was intended to overcome this objection. The representatives were unable to identify the number of state employees that would be reclassified under this rule, noting that decisions would be made on an agency-by-agency basis. The representatives did state that the rule would not impact any collective bargaining agreement.

Several committee members questioned the need for the rule and questioned the number of state employees who would be affected. It was noted that the 1986 objection relates to the status of secretaries who served top-level administrators. In an attempt to simplify the issues surrounding this filing, the committee rescinded the 1986 objection.

Action. 1986 objection rescinded. Further review on adoption.

NATURAL RESOURCE COMMISSION, *Duck Season*, 09/05/12 IAB, ARC 0307C, EMERGENCY AFTER NOTICE.

Background. This filing sets the waterfowl and coot season, including a third zone for duck and goose hunting, the Missouri River zone, which includes all the lands and waters in the state of Iowa west of Interstate 29 and north of State Highway 175. The advantage of the new zone is that hunters will have the opportunity to hunt a week later in this zone than in the south zone. The establishment of a third zone also increases flexibility for adjusting duck hunting season dates if duck seasons are shortened to 30 or 45 days.

Commentary. The size of this new zone was significantly decreased from the initial notice. The May 2 notice included all of Iowa west of Interstate 29. As a result of comment received during the notice portion of the rulemaking process, the commission reduced the size of the new zone. Hunters complained that up until the actual June vote by the commission, adopting the final rules on an "emergency" basis, they had no notice that the actual zone would be reduced in size. They complained they had been denied a fair opportunity to oppose the reduction of the third zone. Agency representatives responded that the comment and discussion during the notice period made it clear that the actual size of the third zone was still in question. The representatives stated that size change was the result of comments and information obtained as part of the rulemaking process.

Committee members discussed this filing with regard to the judicial doctrine that even substantial changes can be made to a notice of intended action as long as those changes are within the scope of the original notice and a logical outgrowth of the comment received on the proposal. Members complained that the "emergency" adoption of the rule precluded any delay of the rule. Agency representatives explained that the agency had a narrow timeline to adopt this rule due to federal review. Some members felt that the public was denied a fair opportunity to comment on the actual size of the third hunting zone, and moved an objection to the rule. The objection failed.

Action. No action taken.

PUBLIC HEALTH DEPARTMENT, *Plumbing Licenses: Renewal,* 10/03/12 IAB, ARC 0340C, ADOPTED.

Background. This filing provides that a licensee who has allowed a license to lapse for not more than 365 days may renew that license without retaking the licensing examination. The filing sets both a late fee and renewal fee that will be due when such a licensee renews a license. A licensee who has allowed a license to lapse for more than 60 days cannot continue to work until the license is renewed; a licensee who does continue to work with a lapsed license may be subject to disciplinary action. The filing identifies two options for license renewal for a licensee who has allowed a license to lapse for more than one year: (1) sitting for the appropriate examination and paying the renewal fee or (2) retaking all continuing education courses and paying the renewal fee.

Commentary. Several stakeholders contended that a licensee who has allowed a license to lapse for more than 60 days should be required to sit for the examination. It was noted that some existing licensees were transitioned in when state licensure was enacted and have never taken the test. These stakeholders maintain that it is a public health issue and that testing is needed to ensure these individuals are competent. Department representatives conceded this had been a contentious issue among the board members themselves.

A committee member moved a session delay on this provision to allow legislative review on license reinstatement. The motion failed.

Action. No action taken.

PAROLE BOARD, *Parole and Work Release Decisions*, 09/05/12 IAB, ARC 0320C, NOTICE.

Background. This rulemaking revises the Parole Board's risk assessment tool used for making releasing decisions for paroles and work releases. Currently, a risk assessment score of one through six requires three affirmative votes for a release, a score of seven or eight requires four affirmative votes, and a score of nine requires all five members to cast an affirmative vote to grant a release. The proposed amendments rescind the language tying a specific risk assessment score to the number of affirmative votes needed for a parole or work release. The amendments also change the requirement that four or five affirmative votes are needed to release certain high-risk inmates. With these changes, three affirmative votes are the most required for release of any single inmate.

Commentary. A representative of the Parole Board reviewed the rulemaking. He explained that the board is moving away from using a single method of risk assessment for inmates. New methods of risk assessment have been implemented and will be in place when the rulemaking becomes effective. The representative confirmed that these new risk assessments are not a part of this rulemaking, and the current risk assessment will still be used as well.

Committee members repeatedly asked if the proposed changes amount to loosening the requirements to achieve parole. The representative responded that while the number of votes needed to parole higher risk inmates will be decreased, the reason for this rulemaking is to comply with the new risk assessment methods and to reduce the lag time between parole decisions and actual time of release. He also explained that requiring more than three votes was an initial policy position when the current risk assessment was still being implemented. Now that the board has better assessment methods, requiring more than a majority vote is no longer necessary. Some committee members questioned whether removing lag time is an adequate reason to pursue this rulemaking; others felt this would improve the decision making process. Committee members asked how risk assessment scores are determined. The representative explained that it is done via computer scoring which takes account of various factors such as criminal history and taking classes while incarcerated.

A representative of the Governor's Office explained that the current risk assessment system is outdated and that the scoring methodology described in the current rule is outdated and ineffective. He also explained that only three of the five members of the board are ever present at board meetings. When an inmate requires more than three votes for a decision to be reached, a delay occurs until the other members vote, and they must work off of meeting notes rather than live experience. He also noted that there is not a specific statutory basis for requiring more than three votes for a parole decision. He stated that this rulemaking does not represent any danger to public safety and promotes efficiency in the parole and work release process.

Public comment was received from a representative of the Justice Reform Consortium. He expressed support for the rulemaking, stating that it would add more human discretion to these decisions rather than relying on scores alone. He expressed concern about the way risk assessment scores are determined, and suggested that this rule would save money and would not result in more inmates being released.

Action. No action taken.

REVENUE DEPARTMENT, *Geothermal Heat Pump and Solar Energy System Tax Credits*, 10/03/12 IAB, ARC 0361C, ADOPTED.

Background. Pursuant to Iowa Acts chapter 1121, (SF 2342), these amendments implement new individual income tax credits for geothermal heat pumps and solar energy systems and a new corporate income tax credit for solar energy systems.

Commentary. A representative of the Department of Revenue explained the rulemaking and the underlying legislation. A committee member questioned whether the date certain for the applicability of these tax credits matches the intent of the legislation. The representative replied that this is within the department's general authority and is intended to ensure the credits are not applied to actions taken years before the tax credits became effective. A motion was made to refer the rulemaking to the General Assembly for further consideration. The motion carried.

Action. General referral.

Next Meeting. The next regular committee meeting will be held in Statehouse Committee Room 116, on **Tuesday, November 13, 2012,** beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

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ADMINISTRATIVE RULES REVIEW COMMITTEE
September 11, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

EDUCATION DEPARTMENT, *Pretesting of Candidates for Admission to Teacher Preparation Programs*, 08/22/12

IAB, ARC 0299C, NOTICE.

Background. This rulemaking implements 2012 Iowa Acts, SF 2284, section 39, relating to pretesting of candidates for admission to teacher preparation programs. Whereas, presently teacher preparation programs are required to administer a "basic skills test" to admission candidates, the new legislation requires that the test be "a preprofessional skills test offered by a nationally recognized testing service." The new legislation also imposes a new requirement that, prior to completion of the program, each student in a teacher preparation program achieve scores above the 25th percentile nationally on an assessment that measures pedagogy and knowledge of at least one subject area.

Commentary. The department director explained the rulemaking and the underlying statute. He noted that the effective date of the new testing requirements would be January 1, 2013, to allow current admission candidates a chance to conform to the new standards. The new standards will not apply to those seeking relicensure. Members verified that the January 1 date means that the new requirements will not affect students who were already planning on testing in fall 2012. Members repeatedly expressed concern that this rule change would negatively affect the current senior class of candidates, who will be testing soon, but after January 1. Members felt it would be unfair to those students to change standards so close to the end of their programs. The director replied that the immediate effective date in the underlying legislation required him not to delay implementation, regardless of the fairness issue.

Members asked how the 25th percentile is figured, and the director explained that it is based on a three-year national average. Members sought clarification as to the precise timeline for when testing must occur and expressed concern that this was not clear in the rulemaking. The director explained that the testing is not a graduation requirement, but is required before a candidate can be licensed. Members asked if a test taken in another state could satisfy the requirement, and the director replied that it could. Members asked if school districts might use the new percentile requirement to impose hiring standards requiring more than the 25th percentile. The director explained that only the candidate will know the final score; districts will only know if the candidate met the percentile requirement or not.

Public comment was received from a representative of the Iowa Association of Colleges for Teacher Education, who asked that the effective date be moved back to July 1, 2013, for the sake of allowing current candidates, as well as colleges which may have to make curriculum adjustments for education students, more time before conformance is required. Public comment was received from a legislator who asked why a pilot project which will soon be complete was not included as an alternative means of satisfying the testing requirement. She was given the impression that this had been provided for in statute. The director replied that he would not consider the pilot project until it is actually complete. Members requested that the director provide the committee with all comments received about the rulemaking before it is finalized.

Action. No action taken.

ENGINEERING BOARD, *Ethics*, 08/08/12 IAB, ARC 0264C NOTICE.

Background. Board rules prohibit a licensee from soliciting or accepting an engineering or land surveying contract from a governmental body when a principal or officer of the licensee's organization serves as an elected, appointed, voting, or nonvoting member of that governmental body. The board adds detail to this existing prohibition.

Commentary. Discussion clarified the application of this policy. For example, a licensee who sits as a member of a town council cannot perform engineering or land surveying work for that town. Board representatives confirmed that a licensee who is a state legislator could provide service to the executive branch.

Action. No action taken.

HISTORICAL DIVISION, *Archeological Site Survey*, 08/08/12 IAB, ARC 0267C and 0268C, ADOPTED.

Background. The State Historic Preservation Office (SHPO) receives an annual federal grant which requires compliance with the federal law. As part of those requirements, any entity receiving federal funds must make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.

Commentary. Under the new law, Iowa Code section 303.18 the SHPO shall only recommend that a rural electric cooperative or a municipal utility constructing electric distribution and transmission facilities for which it is receiving federal funding conduct an archeological site survey when the SHPO has determined that a historic property is likely to exist. The SHPO cannot require a level of archeological identification effort which is greater than the reasonable and good faith effort required by the federal law.

The rules provide that the recommendations and decisions of the SHPO are subject to the review and approval of the director, and an appeal process is provided. Opponents contend that the department director should not have final authority to overrule the SHPO, or that the director's discretion should be limited by specific standards and criteria established in rule.

Rural electric cooperatives supported these revisions noting that surveys can be expensive and create needless delays.

Action. No action taken.

PUBLIC EMPLOYMENT RELATIONS BOARD, *Fees of Neutrals*, 08/08/12 IAB, ARC 0262C, NOTICE.

Background. This rulemaking raises the maximum rate qualified arbitrators and teacher termination adjudicators are entitled to charge from $800 per day to $1,200 per day. This rate is set by the board pursuant to Iowa Code section 20.6(3). This rate has not been updated in five years, and the board believes it is insufficient.

Commentary. A representative of the board explained the rulemaking. She stated that the current rate is under market, which has resulted in the board losing a few arbitrators every year. She noted that this cost is split evenly between the two parties. Members asked what qualifications one needs to become an arbitrator. The representative said that while the board has set standards, they have not been codified in the board's rules. She said they would be codified at a later point, and she would provide them to committee members. Members asked how this rate compares to neighboring states, and the representative replied that some states do not have maximum rates, while others tend to have higher rates than Iowa. Members asked if this rate includes other expenses, and the representative replied that it does not. Members expressed concern about out-of-state arbitrators being used when arbitrators from Iowa are preferable, for reasons of cost and familiarity with Iowa law. Members also expressed concern that the proposed rate is excessive.

Action. No action taken.

SECRETARY OF STATE, *Noncitizen Registered Voter Identification and Removal Process,* 08/8/12 IAB, EMERGENCY.

Background. The Secretary of State has adopted emergency rules for a process to determine whether noncitizens have improperly registered to vote. Under this process the state registrar will periodically obtain lists, from a federal or state agency, of foreign nationals who are residing in Iowa. The list will be matched against the voter registration records to determine likely matches based on predetermined search criteria.

Commentary. Using existing information the Secretary determined that over 3,000 foreign nationals had registered to vote, although more up-to-date information is required before any action could be taken. The Secretary is seeking access to a federal database which would allow investigators to match voter registration with citizenship. In response to a committee question the Secretary stated that an investigator is being paid using federal HAVA (Help America Vote Act) funds.

The Secretary stated that individuals would be initially contacted with a simple enquiry concerning voter eligibility and a request for more information. If no response is made a more forceful communication would follow. The Secretary stated a due process hearing would precede any final action.

Some committee members complained that that there is no real evidence that a problem exists and questioned whether a foreign national would risk a felony charge in order to vote. A member stated that such a program, if needed, should be enacted through the legislative process, not through rulemaking. Members also questioned the need for an "emergency" filing, since action could not now be taken before the November elections.

Members of the public spoke against the new procedures; speakers questioned both the need and the statutory authority for the program. Speakers noted that the program could intimidate naturalized citizens from registering to vote, noting that many immigrants fear any interaction with government based on their earlier experiences.

Action. No action taken.

REVENUE DEPARTMENT, *All-terrain Vehicles Used in Farm Production,* Rules 18.44, 226.17, SELECTIVE REVIEW.

Background. Under Iowa law the purchase of certain machinery or equipment is exempt from the collection of sales tax if it is directly and primarily used in production of agricultural products. The term "agricultural production" means a for-profit farming operation raising crops or livestock. An all-terrain vehicle (ATV) is frequently used in agricultural operations, such as for daily checking and feeding of cattle, spraying for weeds, and checking fences. At issue is whether ATVs can qualify for this exemption. These items are considered taxable unless shown otherwise.

Commentary. The department has interpreted "directly and primarily" to mean that exempt use must be greater than 50 percent of total use. The term "directly used" means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Committee members were generally of the opinion this definition is too restrictive.

Action. General referral.

TRANSPORTATION DEPARTMENT, *Rest Area and Highway Helper Sponsorship Programs, Competition with Private Enterprise*, 07/11/12 IAB, ARC 0187C, 70-DAY DELAY.

Background. The department adopts two new cleanup programs for rest stops and highways. The rest area sponsorship program allows a person, a firm, or an entity to sponsor a rest area by providing a monetary contribution, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway and an interior sign within the primary rest area building. The sponsors will provide the sign, which must measure 24 inches high and 48 inches wide. The department reviews the acknowledgment sign proposed by the sponsor; the acknowledgment will not contain an advertisement or a partisan endorsement.

The highway helper sponsorship program allows a person, a firm, or an entity to provide a monetary contribution to assisting in the funding of that service, in exchange for an acknowledgment sign on the main-traveled way of an interstate

highway patrolled by the highway helper vehicles.

At the committee's August meeting, members expressed concern about the state granting more naming rights to state resources than it already has, and how far such a trend might go. Members also expressed concern about whether sponsors inappropriate for such a setting might win a bid, and whether there might be free speech implications in denying such bids. A motion for a 70-day delay of this rulemaking carried. The committee requested further review at the September meeting.

Commentary. A representative from the department responded to questions raised by the committee at its August meeting. On the issue of potentially controversial sponsors, the representative explained that the Attorney General is satisfied with the language currently in the rulemaking and that new language had been added to the request for proposals (RFP) for these programs specifying that the signage cannot contain political endorsements or statements that may have an "adverse effect" on the state. Similar language has been used before in a highway context. The Attorney General has asked the department to avoid any language prohibiting "offensive" material, as that may raise questions regarding the First Amendment. The representative stated that signage from issue advocacy groups would most likely be acceptable. However, groups would need to certify that they do not discriminate, which could prove problematic for a group such as the Boy Scouts. The representative noted that legal challenges may arise no matter what standards the department sets.

Members asked if the Legislature had authorized participation in these programs, and the representative said it had not. Members asked if funds from these programs had been earmarked yet, and the representative said no, although they would be used for roads. Members asked if out-of-state sponsors could participate, and the representative said yes. Members asked if a legislator could be a sponsor in a nonelection year, or if that would violate the prohibition on political endorsements. The representative was unsure. Members expressed discomfort with the programs in general, and particularly with respect to who might or might not be able to become a sponsor. A motion was made for a session delay of these rules, which will delay the effective date of the rules until the adjournment of the 2013 Session of the General Assembly. The motion carried.

Action. Session delay.

Next Meeting. The next regular committee meeting will be held in Statehouse Committee Room 116, on **Tuesday, October 9, 2012,** beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE
August 14, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

PUBLIC SAFETY DEPARTMENT, *Inspection of Electrical Work on Farms*, 661-551.2, SELECTIVE.

Background. The state electrical board licenses electricians and requires inspection for "[a]ll new electrical installations for *commercial* [emphasis added] or industrial applications." Rule 661-551.2(1) currently in effect, states in part: "An electrical installation on a farm … shall require a state electrical permit, and may be subject to a state electrical inspection…" The Commissioner of Public Safety has issued an order which terminated mandatory inspections of farm facilities "in order to more efficiently allocate resources of the State."

Commentary. Agency representatives stated that electrical wiring on farms presented no threat to the public health, safety, and welfare and that the expense of mandatory inspections was not justified. The representatives also questioned whether the statute requires farm inspections. These sentiments were echoed by several stakeholders who viewed the inspections as an unnecessary expense and a source of delay in the construction of farm buildings.

Several committee members expressed concern that the department's action ignored a requirement imposed by statute. The members noted that there had been ample time to seek legislation to resolve this issue, but instead the department has simply refused to enforce the provisions of the rule.

Action. No action taken.

PROFESSIONAL LICENSING, *Sign Language Interpreters and Transliterators, Examinations,* 07/25/12 IAB, ARC 0228C, NOTICE.

Background. Iowa law requires that all persons providing interpreting services must be tested and licensed. Applicants may choose from several different tests. This rulemaking revises the tests required for persons who wish to be licensed

as sign language interpreters and transliterators.

Commentary. Committee members noted that due to the difficulty of the tests, many people who formerly provided these services prior to the licensure requirements have been unable to pass the tests. Board representatives were unable to provide information of pass rates.

Action. No action taken, additional review on final adoption.

REGENTS BOARD, *Admission Requirements for State Universities*, 07/25/12 IAB, ARC 0220C, NOTICE.

Background. This rulemaking updates various admission requirements for the state's public universities. The rulemaking also removes detailed admission requirements for the colleges at the University of Iowa, the Graduate College at Iowa State University, and the teacher education program at the University of Northern Iowa from the Administrative Code. The removed requirements are included in numerous print and online sources that are readily accessible to prospective students. Other technical changes are made as well.

Commentary. A board representative summarized the rulemaking. Committee members asked why the detailed admission requirements need to be removed from the board's rules, even if they are readily available elsewhere. The representative explained that this would give the individual colleges more flexibility as they review their own standards. Members asked if these rule changes were intended to make the individual colleges independent of the board's rules, and the representative said no. Members asked if these rule changes would allow individual colleges to change their admission standards without going to the board, and the representative said yes. Members suggested that having clear, specific admission standards in the rules would be a better approach, and expressed concern about the board granting too much deference to the colleges in the rulemaking process.

Members also expressed concern that language relating to reporting student misconduct is unclear and arbitrary. Members asked how the recent federal executive order relating to young illegal immigrants would affect these rules, and the representative stated that she did not know at this time.

A motion was made to review this rulemaking further at the committee's September meeting. The motion carried.

Action. Further review at September meeting.

TRANSPORTATION DEPARTMENT, *Rest Area and Highway Helper Sponsorship Programs; Competition with Private Enterprise*, 07/11/12 IAB, ARC 0187C, ADOPTED.

Background. The department adopts two new clean-up programs for rest stops and highways. The rest area sponsorship program allows a person, a firm, or an entity to sponsor a rest area by providing a monetary contribution, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway and an interior sign within the primary rest area building. The sponsors will provide the sign, which must measure 24 inches high and 48 inches wide. The department shall review the acknowledgment sign proposed by the sponsor; the acknowledgment will not contain an advertisement or a partisan endorsement.

The highway helper sponsorship program allows a person, a firm, or an entity to provide a monetary contribution to assisting in the funding of that service, in exchange for an acknowledgment sign on the main-traveled way of an interstate highway patrolled by the highway helper vehicles.

Commentary. A representative of the department explained the purpose of this rulemaking, which adopts these two programs for highways and rest stops in accordance with federal requirements. The representative explained that these programs will help defray the department's operating costs in this area. The sponsorships will be allotted through the RFP process. Committee members asked how much money these programs are expected to bring in. The representative was unsure, as no other state has implemented these programs yet, so there is no basis for an estimate. Members asked if $2,500 is too low a starting bid for the value these programs could provide. The representative explained that is only the starting amount, and bids are expected to go higher, particularly in the most desirable locations.

Members expressed concern about the state granting more naming rights to state resources than it already has, and wondered how far such a trend might go. Members also expressed concern about whether sponsors inappropriate for such a setting might win a bid, and whether there might be free speech implications in denying such bids. A motion was made for a 70-day delay of this rulemaking. The motion carried. The rulemaking will receive further review at the committee's September meeting.

Action. Seventy-day delay. Further review at September meeting.

Next Meeting. The next regular committee meeting will be held in Committee Room 116 at the Statehouse, on Tuesday, September 11, 2012, beginning at 9:00 a.m.

Secretary ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE
July 10, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

ADMINISTRATIVE SERVICES DEPARTMENT (DAS), *Information Technology Enterprise; Human Resources Enterprise*, 06/27/12 IAB, ARC 0180C, NOTICE.

Background. This rulemaking is part of the department's ongoing comprehensive review of its existing rules. This portion of the review relates to the Information Technology Enterprise and the Human Resources Enterprise within DAS. Changes made in these amendments include amending certain definitions to reflect existing statutes, eliminating unnecessary terms, and making various technical and grammatical changes; and conforming the Information Technology Enterprise rules with current statutory law by deleting obsolete terminology, replacing the Technology Governance Board with the Technology Advisory Council, and providing for the state Chief Information Officer.

Commentary. A representative of the department explained the purpose of the rulemaking. The representative noted that the rulemaking is similar to a prior rulemaking which was not completed, with the exception of one controversial provision which was removed. Committee members asked about the purpose of Item 55, relating to exceptions to the retention point system for certain employees with essential skills, and whether the item could be abused to circumvent the merit system. The representative replied that the purpose of the item is to prioritize essential employees over those who do not meet expectations and that multiple layers of review exist to prevent any abuse. Committee members asked about the language of Item 57, inquiring if "meets expectations" is a sufficiently definite term, and whether it is necessary to specify that a negative rating must occur on the most recent performance review within 12 months if performance reviews are always given at least annually anyway. The representative replied that "meets expectations" refers to meeting job requirements and is standard terminology for performance reviews, which include an appeals process. It was explained that the "12 months" reference is to account for a possible situation where an employee is reviewed less than annually despite the requirement for annual reviews. Committee members also asked the department to gather and provide information regarding employees who receive performance bonuses under Item 35.

Action. No action taken.

MEDICINE BOARD, *Mandatory Reporting—Hospital Action*, 06/27/12 IAB, ARC 0176C, NOTICE; *Grounds for Discipline—Failure to Report Hospital Action*, 06/27/12 IAB, ARC 0177C, NOTICE.

Background. These rulemakings require physician licensees to report to the board any action taken which results in a limitation, restriction, suspension, or revocation of their hospital privileges or any voluntary limitation, restriction, suspension, or revocation of hospital privileges to avoid a hospital investigation or hospital action; and add failure to make such a report to the grounds for which the board may take disciplinary action.

Commentary. A representative of the board explained these rulemakings, noting that the intent is for licensees to also report the reasons why hospital privileges are altered. These rulemakings are a response to instances where such occurrences go unreported; the board has found that this happens a few times each year. In response to questions from committee members, the representative explained that the information reported would not become public unless a subsequent investigation turned something up, and that this rulemaking only imposes a reporting requirement on licensees, not hospitals, which are not regulated by the board. A committee member noted that a limitation of hospital privileges might not necessarily involve misconduct by a licensee; it could apply to something simple like a lack of authorization to perform a particular procedure for which a licensee is not qualified.

Public comment was received from a representative of the Iowa Medical Society, who expressed concern about this rulemaking. She questioned whether specific statutory authority exists for this rulemaking, and stated that Iowa Code chapter 147 already covers these matters. She stated that the language of chapter 147 was carefully crafted and provides a multistep process for disciplinary matters, and this rulemaking goes outside of that statutory process. She noted that the statutory process includes immunity for reporting, while this rulemaking does not. She stated that the IMS would continue to work with the board on these issues going forward.

Action. No action taken.

FAIR BOARD, *Lien on Vendor Property*, 06/13/12 IAB, ARC 0162C, ADOPTED.

Background. This rulemaking generally updates the fair board rules relating to general practices conducted during the yearly Iowa State Fair and year-round activities at the state fairgrounds. It was initially reviewed by the committee in April. One item was at issue, relating to liens placed on vendor property for rental and other fees.

Commentary. An objection was placed by the committee in 1981, relating to the placement of liens. The rule at issue states:

> **371—4.8(173) Liens.** The Iowa state fair shall have a lien upon all property being kept, used or situated upon the fairgrounds whether the property be exempt or not, for the rent or privilege money to be paid under a space license agreement and for any damages sustained for any breach thereof. The Iowa state fair board shall have the right to

attach the same without process of law, and appropriate such property to the use of the Iowa state fair to satisfy its claims against the licensee as per licensee agreement.

In 1981 the committee objected to this rule, stating:

> This provision is unconscionable because it is a completely one-sided remedy which puts the state in a completely superior position to the renter; and the only reason it can be imposed is because the state fair is a unique event, and those who wish to participate must comply with the conditions imposed on a take-it-or-leave-it basis. An agency of the state, itself a creation of law, must not use its superior bargaining position to impose contractual conditions that deliberately avoid process of law for their enforcement.

The objection was renewed in 1996. During the intervening period, the statute itself has been revised. A new statutory provision was enacted in 1987, Iowa Code §173.23 provides: "The board has a prior lien upon the property of any concessionaire, exhibitor, or person, immediately upon the property being brought onto the grounds, to secure existing or future indebtedness." The statute now appears to grant an automatic lien on property brought onto the fair grounds. Board representatives stated that no one could recall that the lien process has ever been used. They noted that during the fair rental receipts are collected every day, and that in many other cases rent is actually collected in advance. Committee members were uncertain whether the old objection should be removed and scheduled additional discussion for August.

Action. No action taken, additional review at August meeting.

Next Meeting. The next regular committee meeting will be held in Committee Room 116 at the Statehouse, on Tuesday, August 14, 2012, beginning at 9:00 a.m.

Secretary, ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 12, 2012

Chairperson: Senator Wally Horn

Vice Chairperson: Representative Dawn Pettengill

ATTORNEY GENERAL, Required Disclosures for Philanthropic Contributions Made by Certain Student Loan Lenders to Certain Educational Institutions, 05/30/12 IAB, ARC 0147C, NOTICE.

Background. This rulemaking establishes disclosure requirements for covered postsecondary educational institutions that receive philanthropic contributions from their preferred lenders of educational loans. The rulemaking implements a statutory requirement. Covered educational institutions are required to post information on their preferred lender lists and on their websites about any philanthropic contributions of over $100 in value received from their preferred lenders. Preferred lenders are required to disclose such contributions to the Attorney General within 30 business days and to post information about such contributions on their websites.

Commentary. A representative of the Attorney General explained the purpose of the rulemaking and noted that it had been developed in consultation with industry stakeholders. He also stated that the Attorney General's office was still working with one stakeholder to resolve an outstanding issue. Committee members asked what had caused a delay of several years between the enactment of the statute and the promulgation of these rules. The representative explained that the Attorney General's office had taken the time to develop acceptable language with stakeholders.

Public comment was received from a representative of Wells Fargo, who stated that it would be preferable for the educational institutions to make these disclosures on their own, as it would be difficult for the bank to track the necessary information across all the business entities affiliated with it. The representatives of both the Attorney General and Wells Fargo expressed optimism that the remaining differences could be resolved.

Action. No action taken.

ELECTRICAL LICENSING BOARD, Electrician and Electrical Contractor Licensing Program, 05/30/12 IAB, ARC 0120C, ADOPTED.

Background. Previous Electrical Licensing Board rules provided that a licensee from another state may be licensed in Iowa, without further examination, if the licensing state utilizes an examination approved in Iowa and has a reciprocity agreement.

Commentary. This filing places a number of restrictions on reciprocity; reciprocity is limited to a journeyman class A license. The amendment also requires that the applicant have a score of 75 or higher on the licensing state's examination

and have completed an apprenticeship program or have completed 16,000 hours of electrical work as an electrician licensed by the other state.

This amendment also provides that an application for a license shall be denied if the applicant has unpaid fees which are 120 days or more past due. The license for which the applicant applied may be issued after the fees are paid.

Action. No action taken.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION, Local Emergency Management, 05/30/12 IAB, ARC 0129C, FILED.

Background. This rulemaking implements 2011 Iowa Acts, SF 315, which made various changes to local emergency management planning, including updating the requirements for local comprehensive emergency management plans and making various terminology changes.

Commentary. A representative of the Homeland Security and Emergency Management Division discussed the various changes made in the rulemaking. Committee members asked about the nature of the relationship between the local emergency management commissions and local law enforcement in the event of an emergency. The representative explained that the commission would be in charge in such a situation. Committee members asked if this would mean that local law enforcement would be required to step aside in favor of emergency management personnel such as the emergency management coordinator. The representative explained that the role of the emergency management coordinator is to coordinate, not to dictate, and that coordinators are not necessarily trained in law enforcement; the emergency management process is intended to serve as a means of coordinating the various first responders in the event of an emergency, and law enforcement is referenced merely as one branch of those first responders.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, "Emergency" Rules—Medicaid, SPECIAL REVIEW—FILED EMERGENCY.

Background. Each year, at the conclusion of the legislative session, the Department of Human Services is mandated to adopt a variety of rule changes to the Medicaid program. These provisions must be reviewed by the ARRC before they can be effective.

Commentary. The first of these amendments implements SF 2336, relating to payment for Medicaid habilitation services, home health services, services provided under the elderly, intellectual disability, or brain injury waiver, targeted case management, and services provided in a psychiatric medical institution for children or a community-based intermediate care facility for persons with an intellectual disability (ICF/ID).

The filing removes statutory requirements for county governments to pay the nonfederal share of medical assistance costs for the following services: habilitation, targeted case management, services provided under the home- and community-based services intellectual disability waiver or brain injury waiver, and care in community-based intermediate care facility for persons with an intellectual disability (ICF/ID). The filing increases the cap on home- and community-based services elderly waiver costs.

The filing increases home health agency reimbursement rates by 2 percent effective July 1, 2012. The final item adds psychiatric medical institutions for children (PMICs) as covered mental health services under the Iowa Plan for Behavioral Health.

The second filing reduces Medicaid reimbursement for inpatient hospital care when a member is readmitted to a hospital within seven days of discharge from that hospital for treatment of the same condition.

The third filing lowers Medicaid reimbursement for drugs administered by a physician when the drugs are billed as a physician service. A reduction of 2 percent below the reimbursement rates is required.

Action. No action taken.

SECRETARY OF STATE, Special Elections to Fill a Vacancy in Congress, 05/02/12 IAB, ARC 0109C, FILED EMERGENCY.

Background. The federal 2009 Military and Overseas Voters Empowerment (MOVE) Act requires county commissioners to transmit unvoted balloting materials upon request to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters not later than 45 days before any election at which a federal office appears on the ballot.

Commentary. Committee members noted this rule did not completely follow Iowa statutory requirements. Representatives from the Secretary of State's office stated that the current deadlines in Iowa statutes for providing notice of special elections to fill federal congressional vacancies are too short to meet the federal requirement. The representative stated that federal law takes precedence in this area and the Iowa law needs to be revised to meet the federal requirements.

Action. General Referral. The committee referred this issue to the appropriate committees of the House and Senate, to determine whether Iowa law should be updated.

SECRETARY OF STATE, Athlete Agent Registration, 04/18/12 IAB, ARC 0083C, NOTICE.

Background. This rulemaking updates the rules on the registration of athletic agents to be consistent with current practice and the Iowa Code. The rulemaking codifies existing amounts for registration and renewal fees. Under Iowa

Code section 9A.109, the Secretary of State is to establish the amounts of these fees. The rulemaking also removes obsolete references to surety bonds and contracting requirements.

Commentary. A representative of the Secretary of State explained the rulemaking, noting that these provisions have not been updated for several years to conform with current practice. Committee members questioned the legality of imposing a fee which is not codified. The representative explained that the fee has been codified for some time, but it was increased by a prior administration which did not update the reference in the Administrative Code. Committee members asked for information on the amount of money collected in this way in recent years.

Action. No action taken.

Next Meeting. The next regular committee meeting will be held in Room 116, on Tuesday, July 10, 2012, beginning at 9:30 a.m.

Secretary, ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: https://www.legis.iowa.gov/Schedules/committee.aspx?GA=84&CID=53

ADMINISTRATIVE RULES REVIEW COMMITTEE
May 8, 2012

Chairperson: Senator Wally Horn
Vice Chairperson: Representative Dawn Pettengill

IOWA CAPITAL INVESTMENT BOARD, Verification of Tax Credits for Investment in Fund of Funds, 04/04/12 IAB, ARC 0077C, NOTICE; also ARC 0076C FILED EMERGENCY.

Background. These amendments provide for the information needed by the board to verify the amount of tax credits to be issued related to investments in a Fund of Funds ("Fund") organized by the Iowa Capital Investment Corporation. The amendments also extend the time from 10 days to 30 days for the board to verify the tax credit, provide additional clarification on the maturity date to be used when verifying the credits, and provide clarification of certain definitions. It was previously reported to the committee that several out-of-state financial institutions had commenced litigation in Polk County District Court to overturn these proposals. The district court judge ruled against the banks on all points relating for a request for a temporary injunction; however, at least two actions are still before the district court.

Commentary. Representatives from the board and the Department of Revenue explained the rulemaking and then offered background information on the lawsuits over these amendments. They stated that a loan via the fund was made to a bank, and the loan was to come due in April 2012. In March, internal discussions among the department and the board regarding the fund led to the conclusion that the board would need further information in order to verify the amount of tax credits relating to this loan which would be issued to the bank through the fund. These amendments were then adopted in order to clearly state what information would be required by the board when the loan comes due in order to approve the tax credits. The amendments were adopted on an emergency basis because the loan in question was to come due soon. The representatives stated that these amendments act only as a clarification of the terms of the loan contract regarding what information must be provided for verification, and serve to protect taxpayers by increasing transparency in these tax credits. They also stated that the effect of this rulemaking is to make the applicable rules match what the terms of the contract already require.

An attorney representing a bank opposing this rulemaking offered public comment. He stated that the bank objects to these amendments because they represent not a clarification, but changes in the terms of a contract between the bank and the state which are to the bank's detriment and which were done unilaterally and without the bank's consent. He stated that these amendments are also vague and overbroad. For these reasons, the bank has filed suit over this rulemaking. He further stated that a unilateral change in the terms of a state contract sends the wrong message to businesses who contract with the state.

In response to a question from committee members, it was clarified that the contract between the state and the bank consists of the tax credit certificate underlying this loan. Committee members asked if these amendments are intended to apply retroactively to the contract at issue, and representatives of the board and the department stated that was the explicit intent of this rulemaking.

Committee members asked what the effect is of a rules change which has some bearing on a state contract, presuming that such an occurrence is not unprecedented. A private attorney representing the department replied that the contract is by its own terms explicitly subject to state rules, which implies a right to modify applicable rules.

In response to questions from committee members, the representatives of the board and the department stated that this rulemaking was undertaken in light of what they described as "stonewalling" on the part of the bank in response to efforts by the board and the department to obtain information from the bank necessary for verification. The attorney for the bank

denied that any stonewalling has occurred, and stated that the bank was in favor of transparency in this process and had provided the board and the department with all necessary information and would continue to do so. The representatives disputed that the necessary information had been provided. The attorney for the bank further stated that any problems in obtaining additional information regarding the loan may be the responsibility of the entities to whom the bank made loans from the funds it received, rather than the bank's responsibility. Both sides affirmed to the committee their desire to find a good resolution to this dispute.

Action. No action taken.

HISTORICAL DIVISION, Archeological Site Survey, 02/22/12 IAB, ARC 0104C, NOTICE.

Background. The State Historic Preservation Office (SHPO) receives an annual federal grant which requires compliance with the federal law. As part of those requirements, any entity receiving federal funds must make a reasonable and good-faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.

Rural electric cooperatives contended these surveys can be expensive, and impose needless delays; in response the General Assembly enacted Iowa Code §303.18 in 2011, which modifies this requirement for rural electric cooperatives and municipalities.

Commentary. Under the new statute, the SHPO can only recommend that a rural electric cooperative or a municipal utility constructing electric distribution and transmission facilities for which it is receiving federal funding conduct an archeological site survey when the SHPO has determined that a historic property is likely to exist. The SHPO cannot require a level of archeological identification effort which is greater than the reasonable and good-faith effort required by the federal law.

The rules provide that the recommendations and decisions of the SHPO are subject to the review and approval of the Director of the Department of Cultural Affairs, and an appeal process is provided. Opponents contend that the director should not have final authority to overrule the SHPO.

Action. No action taken, further review on final adoption.

INSURANCE DIVISION, Certificates of Insurance for Commercial Lending Transactions, 04/04/12 IAB, ARC 0070C, NOTICE.

Background. These proposed rules were initially reviewed at the April Administrative Rules Review Committee meeting because they will be implemented on an "emergency" basis before the May meeting.

Commentary. The rules clarify what information a regulated insurance company may provide its customer in connection with a commercial real estate transaction between the customer and a lender. The rules relate to the situation where a lender requires a certificate of insurance on commercial real estate, and what can properly be placed in that certificate.

Action. No action taken.

Secretary, ex officio: Stephanie Hoff, Administrative Code Editor, (515) 281-3355.
LSA Staff: Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

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