



Iowa General Assembly

2007 Committee Briefings

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: [December 11, 2007](#) | [November 13, 2007](#) | [October 9, 2007](#) | [September 11, 2007](#) | [August 14 and 15, 2007](#) | [July 10 and 11, 2007](#) | [June 11, 2007](#) | [May 9, 2007](#) | [April 13, 2007](#) | [March 8, 2007](#) | [February 2, 2007](#) | [January 3, 2007](#)

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, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

Procedural Notes. Due to weather conditions, six Committee members participated via telephone. During the 2008 Legislative Session the Committee has tentatively determined to meet on the Friday prior to the statutory date.

OFFICE OF ENERGY INDEPENDENCE, Organization and Operation, 11/21/07 IAB, ARC 6411B, NOTICE.

Background. In 2007 Iowa Acts, H.F. 918, the General Assembly created the Office of Energy Independence and the Iowa Power Fund. The fund was created to promote the development and commercialization of new energy technologies and practices. To accomplish this goal, the fund will provide financial assistance to Iowa entities conducting business, research, or programs.

Commentary. Both the new agency and the fund are structurally similar to the Iowa Values Fund. The rules establish "boilerplate" rules of organization and operation for the board and eligibility requirements, evaluation criteria, and application procedures for financial assistance from the Iowa Power Fund. The Committee was introduced to three top office administrators. During discussion, it was noted that during the public comment period no comment was received. Committee members voiced support for this program.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Landfill Regulation, 07/04/07 IAB, ARC 5999B, 70-day Delay.

Background. A notice of intended action was initially published in December 2006; the final version was reviewed in five previous meetings. At the August meeting, the Committee delayed the effective date of the filing for 70 days beyond the scheduled effective date of October 1, 2007. That delay expired and the filing became effective on December 10, 2007, the day prior to the rules meeting. Once a rule becomes effective, no further delay can be imposed.

Commentary. Department of Natural Resources representatives provided a synopsis of the history of this rulemaking, beginning with initial drafts four years ago and culminating with a recent informal meeting between stakeholders, department representatives, and Senate Majority Leader Michael Gronstal. The department representatives noted the process had been very full and completely open to public scrutiny and participation. They reiterated willingness to review individual models proposing alternative systems.

Following some discussion, Representative Wise moved an objection to one specific provision: 567 IAC 113.2(8), relating to the closure of existing landfills. In part that subrule provides that cells that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner must close by October 1, 2007; however, existing cells having an approved leachate collection system and a basal liner beneath the cell may continue in operation for up to three years following the October 1, 2007, date. It was noted this provision did not appear in the initial notice of intended action. Agency representatives responded that this was added to benefit the regulated stakeholders

and that without this extension all noncompliant landfills would be forced to close by October 1, 2007. In the notice of intended action, published on December 6, 2007, the proposed rule stated in part: "Existing MSWLF [municipal solid waste landfill] units that do not comply with the leachate collection and liner requirements of subrule 113.7(5) shall close by October 1, 2007..."

Representative Wise contended that in effect the new regulations were being applied retroactively, and contended that landfills in compliance with the previous rules were in essence "grandparented" in place by rules in effect at that time; he referred to the previous subrule which stated:

113.7(1) Design and construction. Sanitary disposal projects designed and constructed in accordance with rules in effect at the time of construction shall not be required to be redesigned or reconstructed due to subsequent rule changes unless the department finds that such facilities are causing pollution. Such facilities shall be brought into compliance with rules in effect at the time of reconstructing, enlarging, or otherwise modifying the sanitary disposal project, or at the time of permit renewal.

Department representatives commented that existing cells are a source of pollution and need to be modified in compliance with the new standards. Some Committee members supported the department's new program, noting the open process and the department's responsiveness. Members suggested a general referral to the General Assembly as an alternative to the objection. The motion to object was adopted on a vote of six ayes to three nays, as set out below:

Ayes 6, Representative Wise, Vice Chairperson, Senator Jeff Angelo, Senator Thomas Courtney, Representative David Heaton, Senator James Seymour, and Representative Linda Upmeyer; Nays 3, Senator Connolly, Chairperson, Representative Marcella Frevert, and Senator John Kibbie; Absent/Not Voting 1, Representative David Jacoby.

Action. Objection to 567 IAC 113.2(8); the objection applies only to that cited subrule. The effect of this action is to shift the burden of proof to the department in any subsequent judicial action challenging the legality of that rule.

HUMAN SERVICES DEPARTMENT, Documentation Requirements for Medicaid Providers, 11/7/07 IAB, 6391B, NOTICE.

Background. These proposed rules add detail to the documentation requirements for specific types of Medicaid service providers. The revision creates a new form — a checklist that department personnel will use to specify what documents must be provided as part of an audit. Detailed procedures for these audits are included in the proposed rules, including reevaluation by the department followed by an appeal procedure. Service documentation which is not received within the required time frame will not be considered in the appeal process.

Commentary. In response to questions from the Committee, department representative Ms. Nancy Freudenberg explained that the documentation included in the medical records is not automatically reviewed at the state level and is only examined if the medical records are involved in an audit. According to Ms. Freudenberg, many of the documentation problems and deficiencies are from the nontraditional providers, rather than the traditional medical community. Committee members expressed concern over restrictions on the use of new information on appeal and questioned whether the rules satisfied all due process requirements. Ms. Freudenberg acknowledged the Committee's concerns, explained that providers will have several opportunities to present the evidence prior to any exclusion on appeal, and indicated that the rule's intent is to prevent alteration of documentation.

Action. No action taken.

INSURANCE DIVISION, Long-term Care Insurance Producer Training Requirements, 08/29/07 IAB, 6205B, FILED.

Background. The Insurance Division of the Department of Commerce currently has rules relating to unfair or deceptive sales or enrollment practices, and has now implemented additional protections by requiring specific training for producers who wish to sell long-term care insurance. The division proposed the National Association of Insurance Commissioners model. This model provides for an initial eight-credit course (a credit consists of 50 minutes), followed by six continuing education credits every three years.

Commentary. This rulemaking was held over from the Committee's September and November meetings. Division representatives informed the Committee that a compromise had been reached with interested parties from the insurance industry. The new rules, which division representatives said would be filed emergency, require four credits of instruction before a producer could sell long-term care insurance, followed by three continuing education credits every three years. Committee members commended the division for reaching a compromise on this issue.

Action. No action taken.

SECRETARY OF STATE, Voter Registration on Election Day, 11/7/07 IAB, 6405B, NOTICE.

Background. 2007 Iowa Acts, H.F. 653, outlined a new process for persons who wish to register to vote on election day and made changes to the types of acceptable identification. Under the proposed rules, identification documents required for election day registration are different from the documents required by the existing rules. Proposed subrule 21.3(4) states that persons wishing to register on election day are required to provide appropriate identification, such as a current and valid Iowa driver's license or nonoperator's identification card or present various other forms of identification containing the person's photograph and a valid expiration date. If the photo identification does not contain the person's current address in the precinct, the person must also present a document that shows the person's name and address in the precinct. In lieu of these identification options, a person wishing to vote may establish identity and residency in the

precinct by written oath of a person who is registered to vote in the precinct.

Commentary. Some Committee members expressed concern that ballots by election day registrants were not classified as provisional and asked about the potential for fraud. Secretary of State Michael Mauro addressed the possibility of voter fraud under the new election day registration process in the context of out-of-state college students who might vote by absentee in their home state and subsequently register to vote in Iowa on election day. Secretary Mauro acknowledged that this practice is possible, but such a practice could have existed under the previous system. Persons convicted of voter fraud face up to a \$7,500 fine and up to five years in prison.

Action. No action taken.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, Reimbursement for Removal of Eligible Underground Storage Tanks, 11/21/07 IAB, ARC 6423B, ADOPTED.

Background. This filing establishes procedures for the reimbursement of claims for the permanent closure of certain tank systems, as authorized in 2007 Iowa Acts, S.F. 499.

Commentary. This provision received no comment during the rulemaking process; stakeholders later determined that a portion of this filing could preclude the filing of any other claim against the fund. After discussion, the Committee voted to delay the effective date of paragraph 11.3(11)"b" only, until January 8, 2008; this allowed the remainder of the filing to go into effect as scheduled on December 26, 2007. The Committee did not impose a full 70-day delay because the members were confident that board representatives and stakeholders can readily resolve any remaining issues. This provision will again be reviewed at the Committee's Monday, January 7, 2008, meeting.

Action. Limited delay imposed; further review in January.

VETERANS AFFAIRS DEPARTMENT, County Grant Program for Veterans, 11/07/07 IAB, 6379B, FILED EMERGENCY.

Background. The goal of the county grant program for veterans is to improve delivery of services by county commissions of veteran affairs. Grants are limited to \$10,000 and the applicant must agree to expend funds equal to the amount of the approved grant. Also beginning in FY 2008-2009, funding will be awarded only for the provision of increased services to veterans over and above the services provided in the previous fiscal year. Beginning with FY 2007-2008, distributed funds must be expended in the fiscal year in which they are appropriated.

Commentary. Department representatives discussed results of the FY 2006-2007 grant program and the status of the FY 2007-2008 applications. A report has been prepared detailing the program's results. Department representatives also explained that the appropriation language for the program has been interpreted to limit grants to only those applications that increase services to veterans over and above the services provided in the previous fiscal year. The department believes this limitation hampers the existing programs and applicants who currently provide services to veterans. Members of the Committee urged the department to recommend a proposal during the next legislative session to address this problem.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Monday, January 7, 2008, at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800

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ADMINISTRATIVE RULES REVIEW COMMITTEE

November 13, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Water Quality Standards, 10/24/07 IAB, ARC 6352B, ADOPTED.

Background. This filed rulemaking revises the levels for 20 chemicals to protect aquatic life in Iowa's streams and 42 chemical parameters for human health. These standards are based on federal Environmental Protection Agency (EPA) minimums; these so-called "304(a) criterion" are EPA scientific recommendations, but they are not a legally binding requirement.

Commentary. Stakeholders and Committee members raised concern that the Technical Advisory Committee (TAC) was not convened to review and comment on the final adopted version of these rules. This committee was created in Code § 455B.176A "to assist in the development of rules to allow for the use of appropriate alternative technologies...." EPC representatives responded that the advisory committee provided input in the initial rulemaking and that additional review and comment was unnecessary since the commission had decided to accept the federal standard.

Concern was also expressed that the "Recreational Use Assessment and Attainability Analysis Protocol" was being utilized prior to its adoption as a rule. That protocol was published as a notice of intended action in September; commission representatives noted this protocol has been in use on an ad hoc basis for some time.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Landfill Regulation, 07/04/07 IAB, ARC 5999B, 70-day delay.

Background. A notice of intended action was initially published in December 2006; the final version was reviewed in June, August, September, and October. At the August meeting the Committee delayed the effective date of the filing for 70 days beyond the scheduled effective date of October 1, 2007. The November ARRC meeting is the last opportunity for review before that 70-day delay expires. The filing contains numerous technical provisions regulating the construction, operation, and closure of municipal solid waste landfills.

Commentary. After months of discussion a number of issues remain unresolved, stakeholders remain divided over these new rules, and attempts to ascertain the formal position of the federal EPA on these issues were unsuccessful. Committee members generally agreed that a legislative resolution of these issues would be undesirable and that the EPC and the stakeholders should resolve the remaining issues. At the request of a Committee member, Senate Majority Leader Michael Gronstal agreed to meet with a small group of stakeholders and attempt to mediate a resolution.

These rules remain under a 70-day delay which is set to expire prior to the Committee's December 11 meeting. For this reason the Committee may convene a special telephonic conference to consider any results of the mediation attempt.

Action. No action taken, further review possible.

ENVIRONMENTAL PROTECTION COMMISSION, Stream Designations, 10/24/07 IAB, ARC 6351B, NOTICE.

Background. The federal Clean Water Act (CWA) established a goal that perennial streams and pools be "fishable/swimmable." To comply with the federal mandate, in a 2006 rulemaking the EPC designated some 26,000 stream segments with the highest "A1" designation, protecting the stream for recreational and aquatic life uses. Following that rulemaking, 2006 Iowa Acts, Ch. 1145, S.F. 2363 was enacted, requiring the EPC to designate each stream segment according to designated uses, e.g., agriculture, aquatic, or recreational use. For each designated use, the EPC is required to adopt water quality standards.

Commentary. The EPC began a series of rulemaking proceedings to establish a specific designation for each Iowa stream, determined after a field study is conducted using specific criteria. That designation process now begins with almost 300 streams being redesignated from the A1 level down to varying levels of protection. EPC representatives noted this represents roughly one-third of the covered streams, and that one or two additional rulemaking efforts will be required. As specific designations are established, effluents from treatment facilities must be reduced to meet the assigned level. EPC representatives noted these designations are all lower than the original "fishable/swimmable" designation assigned in 2006.

Action. No action taken.

DEPARTMENT OF INSPECTIONS AND APPEALS, Regulation of Amusement Devices, 10/24/07 IAB, ARC 3656B, ADOPTED.

Background. 2007 Iowa Acts, S.F. 510, requires the department to adopt rules establishing the criteria for approval or denial of a registration application to install an electrical and mechanical amusement device. This amusement device is similar to a slot machine; awarding tickets redeemable for food and merchandise at the business where the device is located. Qualified nonprofit organizations can have up to four machines (e.g., veterans clubs) while other establishments (e.g., bars or convenience stores) can have two.

Commentary. Since the number of registrations is capped in the statute, these rules establish a waiting list for the privilege of registering a device. Department representatives noted that registrations are currently available and that, at present, no waiting list is in use.

Action. No action taken.

INSURANCE DIVISION, Nursing Home Insurance: Producer Education, 08/29/07 IAB, ARC 6205B, 70-day delay.

Background. In response to concerns over the sale of long-term care insurance, the Division specified an educational requirement directly related to this type of insurance. Required training includes an initial eight-credit course (a credit consists of 50 minutes), followed by six continuing education credits every three years. These rules were delayed in September 2007 for 70 days.

Commentary. This change was opposed by the Independent Insurance Agents of Iowa; an association representative noted that insurance producers are already required to take ongoing education in a number of areas, and this requirement would increase that burden and encourage agents to drop long-term care insurance. Division representatives stated that negotiations with the professional association are ongoing, and expressed confidence that the issues would be resolved.

Action. The 70-day delay remains, further review in December.

INSURANCE DIVISION, Sales of Cemetery Merchandise, Funeral Merchandise, and Funeral Services, 10/24/07 IAB, ARC 6333B, EMERGENCY.

Background. Under 2007 Acts, S.F. 559, preneed sellers and individual sales agents must obtain licenses from the Division and the licensees must meet annual reporting requirements; Iowa law previously required only business permits. The Act also revises the regulation of cemeteries.

Commentary. Committee members received written comment from legislators who developed S.F. 559. That letter stated that "[o]n more than one occasion the rules stray from the intent of the legislation" and cited several examples.

Action. The 70-day delay remains, further review in December.

EDUCATION DEPARTMENT, Accreditation Standards — Core Content Standards, 10/10/07 IAB, 6156B, NOTICE, 6292B, TERMINATED. General Accreditation Standards, 10/10/07 IAB, 6291B, NOTICE.

Background. ARC 6156B was initiated by the department to amend chapter 12 primarily by implementing core content standards for all kindergarten through twelfth grade students in reading, math, and science as mandated in 2007 Iowa Acts, S.F. 588, section 17. As the notice was being edited for publication, the department became aware that another mandate in S.F. 588, section 16, requires the state board to adopt rules requiring certain high school graduation requirements. The department decided to terminate the existing rulemaking and renotice the content of ARC 6156B, but include the additional change to chapter 12 of adding the graduation requirements.

Commentary. Representatives from the department noted that there was very little public comment on the previously noticed rulemaking. Members of the Committee noted that they are receiving inquiries from constituents regarding the new standards and whether the standards are adequately directed to help students compete in today's economy.

Members also questioned department representatives about the role of physical education in school curriculum and whether districts are seeking to remove the physical education requirement altogether. Representatives indicated that the physical education waiver is in place and available for districts.

Members discussed the perceptions of curriculum flexibility in Iowa. Department representatives believe that Iowa's standards are more flexible than other states' standards. The department is pushing for a national independent think tank or group to establish model standards.

Action. No action taken.

EDUCATION DEPARTMENT, Statewide Voluntary Preschool Program, 10/10/07 IAB, 6289B, ADOPTED.

Background. Under 2007 Iowa Acts, H.F. 877, a voluntary preschool program has been created for four-year-old children. The Act requires the department to adopt rules to define the preschool program requirements used to determine whether a local program qualifies as an approved local program. Funding priority is given to school districts that have a high percentage of children in poverty and priority is given to districts that do not currently have a program.

Commentary. Representatives from the department informed the Committee that after meeting the funding requests of 53 district applicants, sufficient funding remained to fund 11 more district preschool programs. Committee members raised concerns with the interaction and involvement of area education agencies (AEAs), local empowerment boards, and school districts in the development and operation of preschool programs. Committee members informed department representatives that some districts felt the application process lacked consistency.

Action. No action taken.

EDUCATION DEPARTMENT, Special Education, 10/10/07 IAB, 6288B, ADOPTED.

Background. Federal statutory and regulatory changes require most of the substantive revisions in this rulemaking. Changes to the rules include access to instructional materials, state monitoring and general supervision, early intervention services, and services to parentally placed private school students. Other substantive changes include eliminating rules-based instructional delivery systems and specifying that provision of instructional services in homes and hospitals is the responsibility of the district of residence.

Commentary. Department representatives stated that Response to Intervention (RTI) is becoming the preferred model for identifying children with special education needs. RTI has the support of family groups; however, some higher education specialists are resistant to changing models. The department described RTI as being more proactive in identifying special education needs. In response to Committee questions, department representatives indicated that the new model has not necessarily shown an increase in the number of children receiving special education services. RTI has increased costs in the short-term, but the department believes long-term special education costs will be reduced.

Action. No action taken.

EDUCATION DEPARTMENT, Supplementary Weighting, 10/10/07 IAB, 6290B, NOTICE.

Background. Both 2007 Iowa Acts, S.F. 447 and S.F. 588, section 20, created new opportunities for school districts and AEAs to request supplementary weighting. Pursuant to the proposed rule revisions: Whole-grade sharing arrangements will be eligible for supplementary weighting for three years under certain circumstances and can be carried forward another three years; classes taught using the Iowa Communications Network (ICN) video network will now be eligible for supplementary weighting; and teachers providing the ICN class will receive a portion of the supplementary weighting funding. Operational function sharing will be eligible for supplementary weighting for up to five years with an annual 20 percent phase-out. AEAs, as well as school districts, will be eligible for supplementary weighting under this plan, and the

potential sharing partners are expanded.

Commentary. Committee members expressed a desire for further education of local districts about the supplementary weighting changes. Members also suggested that department officials create or clarify an appeal process under these rules. Some also asked for clarification on the types of transportation costs that may be shared under the rules. Department representatives explained their belief that shared costs are limited to the operational or managerial level under the language of the legislation.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, Expansion of Medicaid Coverage for Dental Services, 10/10/07 IAB, 6301B, NOTICE.

Background. These proposed amendments expand Medicaid coverage for dental services to include dental sealants on all baby and permanent posterior teeth and include root canal retreatments and dental implants with prior authorization. The department believes the prior authorization process is a more efficient method to allow for coverage.

Commentary. In response to Committee questioning, department representatives indicated that the number of dentists accepting Medicaid patients is low, and told members that they would provide specific data on that issue. Several committee members expressed support for an approach which focused on prevention of dental health problems. Although the precise fiscal impact was unable to be determined, it is believed that there should be significant savings in the long-term due to the effectiveness of sealants.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, December 11, 2007, at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800.

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ADMINISTRATIVE RULES REVIEW COMMITTEE

October 9, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Iowa Waters: Recreational Use Assessment Protocol, 09/26/07 IAB, ARC 6251B, NOTICE.

Background. This rulemaking ties in to the 2006 rules in which most of Iowa's streams were given recreational use protections at the highest "fishable/swimmable" level (class A1). The 2006 rulemaking was the first of a two-part process; it did not immediately require any local action. Future rulemaking proceedings will establish a specific designation for every Iowa stream which receives a discharge from a treatment facility. This proposal sets out the criteria to be used when each individual stream is evaluated in an actual field survey to determine the appropriate protection level. The evaluation will determine whether the class A1 designation is in fact appropriate. The cumulative effect of all these rulemakings will be to limit the amount of effluent that local treatment facilities may introduce into streams and rivers. Many of these facilities will require upgrades to meet the final stream standards. Standards for aquatic life and cold water evaluations are already in place.

Commentary. Commission representatives noted this protocol has been in use on an ad hoc basis, but with the formal evaluation of almost 300 Iowa streams under way, the EPC wants to formally adopt the protocol as rules. The representatives also noted that each individual stream designation would be adopted through the rules process. Under the protocol each stream will be evaluated and assigned to one of three categories based on its condition. "Primary contact recreational use" (class A1) includes waters used for such things as swimming, diving, water skiing, and water contact recreational canoeing. "Secondary contact recreational use" (class A2) includes waters in which recreational or other uses, such as boating, may result in contact with the water that is either incidental or accidental. "Children's recreational use" (class A3) includes waters in which recreational uses by children are common. Using this protocol it is possible that a stream with an A1 classification could be downgraded if it can be demonstrated that the class A1 use is neither existing nor attainable.

Action. No action taken, additional review is anticipated when rules are adopted in final form.

ENVIRONMENTAL PROTECTION COMMISSION, Regulatory Analysis: Application of Liquid Manure, 07/04/07 IAB, ARC 6250B.

Background. Individuals requested a regulatory analysis on an EPC proposal which would limit application of liquid manure, process wastewater, or settled open feedlot effluent to 100 pounds of available nitrogen per acre to land that is

planted to soybeans or that will be planted to soybeans the next crop season. Five years after the rules go into effect, application on these fields would be prohibited. The notice was initially proposed in January. The request for analysis has delayed final adoption of the rule.

The analysis in general terms stated that the restriction would impact larger producers who would be forced to find new fields to apply the waste, and transporters who would be forced to truck the waste longer distances. The analysis did not estimate to what extent the limitation would reduce the level of nitrates in surface waters.

Commentary. Commission representatives stated that soybeans are capable of producing their own nitrogen and the 100 pound limit estimates the amount of nitrogen that can be utilized by a soybean. The representatives also stated that the restriction does not apply to soybean fields that would be planted in corn the following spring, since the newly planted corn would utilize the nitrogen. The representatives conceded that the analysis does not contain any hard data concerning the impact of this restriction.

Committee members questioned the benefits of the rule, noting that in usual rotation, a corn crop would follow a soybean crop and that standard practice is to promptly incorporate liquid waste into the soil, thus reducing the chance of runoff. Some members supported the limitation, noting the threat nitrates pose to Iowa's groundwater.

Action. If adopted, the final rule will be reviewed in January 2008.

ENVIRONMENTAL PROTECTION COMMISSION, Municipal Landfills, 09/26/07 IAB, ARC 5999B, ADOPTED, HELD OVER FROM AUGUST AND SEPTEMBER.

Background. These rules have been previously reviewed at the Committee's January, July, August, and September 2007 meetings and relate to the construction, operation, and closure of municipal solid waste landfills.

Commentary. This review was a discussion of some of the technical issues involved in landfill management. Commission representatives provided an overview of landfill cell construction. The presentation detailed the EPC position that an active landfill cell which abuts a previous unlined waste site needs a sidewall liner to prevent leachate from moving into the old area and then entering the groundwater. The representatives repeated their willingness to approve alternatives to a liner if compliance modeling demonstrates equivalent protection. In response to Committee questioning, commission representatives stated that discussions with stakeholders are ongoing, with the most significant issue being the handling of leachate. Commission representatives then noted that in response to a September letter from the federal Environmental Protection Agency in Washington, D.C., which called into question the position of the federal government, the EPC has requested clarification of the federal government's position and hoped to have that response by November.

Responding to a Committee request, Professor William Simkins from Iowa State University made a presentation concerning the effectiveness of a clay base. Pointing to a number of studies, the professor stated that clay contains permeable fractures capable of passing leachate, sometimes at high velocity. The professor stated that once a clay base begins to leak, the source of that leak is very difficult to locate and repair. He also noted that a clay base needs to remain moist, since dry clay fractures even more. The professor favors the use of plastic liners.

In open discussion there was full agreement that all unlined cells need to be closed, but there was no general consensus on the overall program. Committee members urged all stakeholders to continue discussions and avoid legislative review of this issue.

Action. The previously adopted 70-day delay remains in effect, additional review is anticipated in November.

SECRETARY OF STATE, Use of Voting Equipment: Paper Record, 09/26/07 IAB, 6127B, NOTICE, ARC 6254B, TERMINATED.

Background. 2007 Iowa Acts, S.F. 369, makes a number of changes relating to voting machines and optical scan voting systems. Under the Act, when electronic voting machines are used a supply of paper ballots must be available in case technical problems prevent voters from voting on the electronic voting machines. Any documents, including paper records showing the progress of the count, must be sealed and stored. In the event of a recount, if an electronic voting machine was used, the paper record produced by the machine is the official record in a recount unless that record is compromised in some way. The Act also provides that a county whose voting system primarily utilizes direct recording electronic devices, shall, when seeking to replace the voting system, replace the voting system with an optical scan voting system only; and, to assist handicapped voters, use electronic ballot marking devices that are compatible with an optical scan voting system.

ARC 6127B was intended to implement the changes in S.F. 369, including a requirement that direct recording electronic voting equipment include a paper record for review by the voter. The Secretary of State terminated the rulemaking initiated by notice. Rules included in ARC 6127B were also adopted by the Secretary of State as ARC 6129B. Termination of ARC 6127B prompted Committee discussion about the status of new voting machine implementation.

Commentary. Representatives from the Secretary of State's Office informed the Committee that none of the newly mandated paper trail machines have been certified, but that certification is expected. The secretary's representatives also indicated that with the appropriate funding, implementation of the new voting machines could occur in time for the 2008 general election.

Committee members and the secretary's representatives agreed that the goal with the new legislation and rules is to

promote the use of optical scan machines with the automark feature. According to the secretary's representatives, the \$2 million appropriation made during the 2007 Legislative Session was insufficient to permit all counties to update to the automark machines. Instead, counties are looking at a less expensive way to comply with the law for the 2008 general election. This less expensive alternative would utilize an attachment to existing touch screen voting machines. This attachment, however, may quickly become obsolete depending on pending federal legislation. In order to allow the whole state to purchase automark machines, a total appropriation of \$9 million is needed. The cost of automark machines is higher than other compliance options and there is only one manufacturer of the machines.

Training of polling officials on the new equipment was also raised as an issue of concern. According to members of the Committee, this concern is amplified based on current difficulties for poll workers in understanding and operating electronic-based machines. Members of the Committee were further concerned about the ability to adequately staff polling places.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, November 13, 2007, at 9:00 a.m. EPC rules relating to landfills, ARC 5999B, will be reviewed at about 2:15 p.m. on that date.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800

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ADMINISTRATIVE RULES REVIEW COMMITTEE

September 11, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

EDUCATION DEPARTMENT, Antibullying and Anti-harassment Requirements, 8/15/07 IAB, ARC 6161B, NOTICE.

Background. Under this proposal, education programs are prohibited from discrimination on the basis of sexual orientation, gender identity, and socioeconomic status. The provisions do not extend to a "bona fide religious institution". These protections are being added to the department's accreditation standards. Those standards require all schools to provide equal opportunity in programs to students in a protected class. Authority for these revisions comes from 2007 Acts, S.F. 427, amending Iowa's Civil Rights Act, and 2007 Iowa Acts, S.F. 61, relating to school anti-bullying and anti-harassment policies.

Commentary. Department representatives stated there is no opposition to these rules, noting that as part of the accreditation standards failure to abide by the requirements could result in loss of accreditation. Committee members noted a discrepancy between the "traits and characteristics" established in S.F. 61 and those set out in the rule. Senate File 61 uses the phrase "includes but is not limited to" and then enumerates a series of traits and characteristics, implying that the list is nonexclusive. The rules set out only the enumerated traits and characteristics. Committee members felt the phrase is important to ensure that the antibullying protections are widely available. Department representatives commented that the list itself is very broad, but agreed to review the matter further prior to adoption.

Action. No action taken, further review when rule is adopted.

EDUCATION DEPARTMENT, Application Procedures: Preschool, 6/20/07 IAB, SPECIAL REVIEW.

Background. 2007 Iowa Acts, H.F. 877, created a voluntary preschool program for four-year-old children. The "emergency" rules implementing this new program were reviewed by the Committee in July.

Commentary. The issue under review was whether the application process itself is unfair. The application instructions indicate that failure to follow the prescribed format may result in a rejection of the application. Department representatives stated that program narratives were strictly limited to ten pages, double spaced. The representatives offered two reasons: first to provide a standard, easy-to-read format for the grant readers; and second to ensure that all applicants had the same opportunity to explain and detail their proposal. It was also noted that exclusion is a common penalty for failure to comply with the application instructions.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Landfills, 7/4/07 IAB, ARC 5999B, ADOPTED, HELD OVER FROM AUGUST AND SEPTEMBER.

Background. These rules have been previously reviewed at the Committee's January, July, and August 2007 meetings. This filing updates rules dating back to 1997 and regulate the construction, operation, and closure of municipal solid waste landfills.

Commentary. The key issue in this rulemaking involves a requirement for the side lining of certain "cells" at landfill sites and whether this is actually required by the federal Resource Conservation and Recovery Act (RCRA) and the rules implementing that Act. At the August meeting federal officials stated that the new rules complied with federal requirements, but did not state that side liners are mandated.

Private discussions between EPC and opponents of these rules did not reach a compromise; moreover, in a letter from the federal Environmental Protection Agency in Washington, D.C., the director of the Solid Waste Division states: "...any owner or operator complying with provisions in a state program approved by EPA should be considered in compliance with the federal criteria." The letter also noted that Iowa's current program still holds a determination of adequacy. This letter renewed questions regarding the need for the new rules.

In response to questions from the Governor's Administrative Rules Coordinator, department representatives stated that Iowa's program was less restrictive than any of the surrounding states and that lower costs encouraged the transfer of out-of-state wastes into Iowa landfills. It was again noted that many landfill operators do support the new program. Department representatives stated that the new rules are necessary to prevent groundwater contamination and reiterated that EPC is willing to review and approve alternatives if scientifically based modelling proves that the alternative provides equivalent protections.

Time constraints precluded a full opportunity for public and agency comment. Committee members were not convinced that a compromise could not be reached and unanimously voted to delay the effective date of these rules for 70 days, *Administrative Rules Review Committee continued from Page 3*)

with the intention of holding additional review and taking additional comment at the October Committee meeting. At that meeting an EPC representative will explain the technical and practical details of the liner requirement.

Action. 70-day delay.

INSURANCE DIVISION, Nursing Home Insurance: Producer Education, 8/29/07 IAB, ARC 6205B, ADOPTED.

Background. In response to concerns over the sale of long-term care insurance, the division adopted an educational requirement specifically relating to this type of insurance. Required training includes an initial eight credit course (a credit consists of 50 minutes), followed by six continuing education credits every three years.

Commentary. This change was opposed by the Independent Insurance Agents of Iowa. A representative of that association noted that insurance producers are required to take ongoing education in a number of areas, and this requirement would increase that burden and encourage agents to drop long term care insurance, leaving much of that market to out-of-state telemarketers. Committee members felt that the division and the association should discuss this issue and attempt to find compromise. For that reason the Committee imposed a 70-day delay, with further review at the October 9 meeting.

Action. 70-day delay.

RACING AND GAMING COMMISSION, Prehearing Suspension of Licenses, SPECIAL REVIEW, CONTINUED FROM APRIL.

Background. Commission rules provide for the temporary suspension of a license, prior to an evidentiary hearing, when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted. At the Committee's April meeting members were concerned over the mandatory suspension, regardless of the occupation or whether any threat to the public health, safety, or welfare exists. A commission representative proposed language, to be added to the rules, creating an "immediate danger" standard for temporary license suspensions.

Commentary. The Racing and Gaming Commission considered this proposal at its June meeting, where the assistant attorney general advised the commission that no rule change was necessary. Based on this advice the commission declined to revise the rule. The Committee determined that any further action should come through the legislative process and referred this rule to the General Assembly.

Action. General referral.

REVENUE AND FINANCE DEPARTMENT, Property Tax: Evaluation of Agricultural Property, 701 IAC 71.3, see: 1/31/07 IAB.

Background. This rule was part of a January rulemaking which was reviewed by the Committee in February 2007. At that time discussion centered around the valuation of commercial real estate. Under rule 71.3, agricultural real estate is assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. To determine value for agricultural buildings and structures, an "agricultural factor" is developed specific to the area. Simply put, under the rule the assessment of buildings should be at the same ratio of actual value as the productivity assessment is to market value of agricultural land.

Commentary. It was agreed that the rule itself is proper and that farm structures have a lower value than the farmland itself. However, by lowering the value of buildings, the valuation of the farmland itself is increased. Discussion revealed that agricultural building assessments vary significantly by county and somewhat by building type. Department representatives noted that perhaps only 35 percent of the counties are in substantial compliance with this rule.

Action. Referral to the General Assembly.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, October 9, 2007, at 9:00 a.m.

ADMINISTRATIVE RULES REVIEW COMMITTEE

August 14 and 15, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Air Quality: Ethanol Plants, 8/3/07 IAB, ARC 6040B, NOTICE.

Background. The federal Environmental Protection Agency (EPA) has modified the definition of "chemical process plants" by excluding most ethanol production facilities from the definition. A chemical process plant is one of the listed categories for major sources of emissions in the federal Clean Air Act. The effect of this exclusion will be to expedite the air quality permitting process for ethanol plant construction.

Commentary. The EPC proposes to adopt the federal change into Iowa's rules. The effect will be to increase emission limits for ethanol production from 100 tons per year to 250 tons per year. Committee members expressed support for these changes.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Landfills, 7/4/07 IAB, ARC 5999B, ADOPTED.

Background. The EPC rewrites an existing program relating to the construction, operation, and closure of municipal solid waste landfills. The existing Iowa program does not comply with the federal Resource Conservation and Recovery Act (RCRA) and the rules implementing that Act. The existing program has been in place since 1997, with the approval of federal officials. A January 2007 fiscal summary by the Legislative Services Agency estimated one-time costs to comply with the new program at roughly \$18 million with additional one-time costs for establishing background water quality ranging between \$24,000 to \$131,000 per site. Ongoing costs were estimated to range from \$26,000 to \$169,000 per site annually.

These revisions were previously reviewed at the Committee's January and July 2007 meetings.

Commentary. This rulemaking presented a number of technical issues and landfill operators have noted that the new requirements would significantly increase the cost of waste disposal. The most contentious issue in this rulemaking relates to the lining of "cells" at landfill sites. Under this new provision side liners are required in new and existing cells. Cells constructed in compliance with the 1997 rules contain base liners, but side liners were not required. Under the new rules these cells could continue in operation for only three more years; any landfill cells with no liners could be closed.

At both the July and August Committee meetings, this requirement was opposed by landfill operators who have fill capacity beyond the three-year period. Opponents contended that the cells constructed under the 1997 rules complied with federal requirements and should continue in use until filled; at that point any new cells could be constructed to the new standards. The EPC representatives responded that the federal EPA requires all cells to be fully lined. Opponents contended that the federal government did not mandate a side liner. The Committee took no action at the July meeting, but requested that federal EPA officials attend the August meeting and clarify the federal requirements.

Federal officials attended the August Committee meeting. They declined to state that full cell liners were required by the federal rules, but the officials did establish a number of points.

- The 1997 Iowa rules do not comply with federal requirements.
- The current rulemaking does comply with federal requirements.
- Alternative techniques, based on environmental performance, may be approved by the EPC.

Speaking on behalf of the EPC, the Director of the Department of Natural Resources emphasized the additional protections to the groundwater contained in these new rules and stated that the rules allow flexibility, on a case-by-case basis, to approve alternative techniques that provide protections comparable to the new rules; this could include alternatives to the side liner requirements. The director emphasized that EPC would seriously consider alternatives as long as those alternatives provided comparable protection. The director also reiterated willingness to continue meeting with stakeholders to resolve any issues with the rules. A variety of stakeholders spoke both in favor and in opposition to the rules. In general, opponents contended that cells constructed in compliance with the 1997 standards should be "grandfathered" in place under the new rules. Proponents noted that the revisions had been under development and in discussion since 2002 and that all landfills had ample warning that new requirements would be put in place.

Committee members were encouraged with the discussions that had occurred, noting that the rules do not take effect until October 1, 2007. The members took no formal action except to schedule additional review at the Committee's September meeting. Members requested that the Iowa EPC provide more details on the process for evaluating and approving alternative techniques, and requested more information from the federal EPA detailing how the 1997 Iowa rules fail to

meet EPA standards.

Action. Additional review scheduled for September 11, 2007.

HISTORICAL DIVISION, Historic Tax Credits, 7/18/07 IAB, ARC 6062B, EMERGENCY.

Background. The provisions of 2007 Iowa Acts, S.F. 566, revise the property tax rehabilitation tax credit. Originally this tax credit applied to commercial and residential property and barns established before 1938. The property receiving the tax credit is required to be on the National Register of Historic Places or eligible for a listing.

Commentary. The revisions increase the annually capped credits offered through the program from \$2.4 million to \$6.4 million. The new rule allows for 10 percent of the tax credits to be used for new projects under \$500,000, 40 percent of the credits are reserved for new projects in certified cultural and entertainment districts or identified in Iowa Great Places Program agreements, and 50 percent to statewide projects. The rule sets out a number of eligibility criteria in regard to costs of rehabilitation in order to qualify for the tax credits. The rule additionally provides for the recapture of "abandoned" tax credits. It was suggested that the division also publish the new rule as a notice of intended action to seek additional comment. Agency representatives stated that the rule was developed with stakeholder input, but agreed to publish a notice.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, Medicaid Audits, SPECIAL REVIEW.

Background. The Centers for Medicare and Medicaid Services (CMS) is a federal agency which administers Medicare, Medicaid, and the State Children's Health Insurance Program. Working through the Department of Human Services, CMS provides funding for a variety of services. The CMS periodically audits department records and demands that the department reimburse the federal government when CMS believes that funds have been disbursed without proper recordkeeping. The department repays the amount from state funds, and then seeks reimbursement from the actual service provider.

Commentary. The Committee does not have authority to review individual cases currently under review, but did review the general question relating to rulemaking. Chapter 87 of the department's rules set out detailed audit requirements for Medicaid providers and adopts by reference the Medicaid providers' manual. In general these rules require documentation of the date, time, duration, location, and description of each Medicaid service delivered and identification of the individual rendering the service by name and professional or paraprofessional designation. Additional documentation requirements specific to the service provider are set out in rule 185.10(6)"b".

The issue is whether it is appropriate for the department to seek repayment from a provider for an audit deficiency which is not set out in the department's rules or the manual. Members noted that audits are a tool used by CMS to control Medicaid expenses. As a federal agency CMS is not bound by the department's rules and can claim deficiencies which are not specified in the rules.

The Committee took testimony from a provider who had been assessed for a \$350,000 repayment; the provider requested that the Committee object to the existing rule on the grounds that it did not specify the required information. Since the issue is on appeal within the department, department representatives took no part in this discussion. Members commented on the unfairness of the audit assessment, but did not object to the rule because of the pending appeal, noting a long-standing policy against interference with a judicial process. Members expressed frustration with this reoccurring issue.

Action. No action taken.

INSPECTIONS AND APPEALS, Card Tournaments by Veterans' Associations, 7/18/07 IAB, ARC 6053B, EMERGENCY.

Background. Authority is provided in 2007 Iowa Acts, S.F. 414, for the licensure and operation of card game tournaments by veterans organizations.

Commentary. Tournament games are limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, or cribbage. A veterans organization may hold two card game tournaments per month.

Action. No action taken.

LABOR DIVISION, Shoot Fighting, 8/1/07 IAB, ARC 6053B, ADOPTED.

Background. Shoot fighting, which combines boxing, judo, kickboxing, and wrestling, is regulated by the athletic commissioner under Code chapter 90A. In 2007 the General Assembly considered legislation regulating this type of event. The Department of Workforce Development proposed legislation requiring the registration of each "shoot fighter", imposing fees and prohibiting amateur shoot fighting events. The Senate Committee on Labor and Business Relations introduced legislation to completely deregulate these events. That legislation passed the Senate, but was not considered in the House.

Commentary. These rules add two significant requirements to current regulations. The rules hold the promoter of the event generally responsible for the conduct of the officials and the participants at a shoot-fighting event and require the promoter to provide life, medical, surgical, and hospital insurance to shoot fighters. Representatives of the National

Ultimate Fighting Organization contended these rules are an attempt to enact failed legislation through the rulemaking process, noting that legislators during the 2007 Legislative Session considered but failed to enact legislation to regulate the profession. The representatives voiced support for a regulatory program, but maintained that it should be established through legislation and not rules. Division representatives noted that Code § 90A.4 specifically holds the promoter responsible "for the conduct of all officials and participants at a professional boxing or wrestling match" and stated that by extension this applies to shoot-fighting matches as well.

General discussion reviewed the regulatory background of shoot fighting, beginning in the 1990s when it was agreed that shoot fighting should be regulated as a combination of boxing and wrestling. It was noted that so-called amateur events, where the participants are unpaid and the events completely unregulated, are becoming more common and are often held in bars. In this discussion Committee members generally supported these rules, with some members expressing reservations about imposing additional levels of regulation when legislation had failed. Members supported the insurance requirement, with some members stating that the \$25,000 health insurance and \$20,000 life insurance requirements are inadequate.

The Committee decided that the rules should go into effect, but that the General Assembly should consider legislation to properly license and regulate the sport, including amateur events.

Action. General referral to the General Assembly.

PUBLIC SAFETY DEPARTMENT, National Criminal History Checks for Teacher Applicants, 7/18/07 ARC 6046B, EMERGENCY.

Background. Under 2007 Iowa Acts, S.F. 601, school districts are required to request a background investigation by the Division of Criminal Investigation, or request a qualified background screening company perform a background check on an applicant for a teaching position before that person may be employed; both must include a national criminal history check.

Commentary. Department representatives noted that the language of S.F. 601 calls for a "thorough background investigation" if the request is made to the Division of Criminal Investigation. This phrase is a term-of-art in law enforcement which requires a very expensive investigation involving personal interviews. Other provisions of the Act made it clear that the investigation should consist of a national criminal history check, a review of the sex offender registry information, the registry for child abuse information, and the central registry for dependent adult abuse.

The department's rule reflects the type of investigation set out in the Act and does not require personal interviews. The cost is estimated at \$37 per check. The department will seek correction of the statutory language.

Action. No action taken.

VETERANS AFFAIRS, Veterans Trust Fund, 8/4/07 IAB, ARC 6126B, EMERGENCY.

Background. This proposal implements the requirements of Code § 35A.13, which established the Veterans Trust Fund, and 2007 Iowa Acts, H.F. 817, § 7.

Commentary. This fund allows eligible veterans or their spouses to receive benefits including travel expenses related to follow-up medical care, job training or college tuition assistance, unemployment assistance during unemployment due to physical or mental illness resulting from military service, expenses related to nursing facility or home care, individual counseling or family counseling programs, family support programs, and honor guard services. The rules outline an application procedure. The county director of veterans affairs will make a recommendation to the Iowa Commission of Veterans Affairs whether to approve or deny an application. The commission will approve or deny all applications at its quarterly meetings. The rules also provide a waiting list procedure in the event all Veterans Trust Fund moneys have been obligated.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, September 11, 2007 at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

July 10 and 11, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

COLLEGE STUDENT AID COMMISSION, Scholarships, Grants, and Loan Forgiveness Programs, 7/4/07 IAB, ARC 6017B, 6018B, 6020B, and 6022B, EMERGENCY.

Background. These filings implement 2007 Iowa Acts, S.F. 588, establishing various college financial assistance programs for Iowa students. The All Iowa Opportunity Scholarship Program provides tuition assistance to Iowans enrolled in an eligible Iowa college or university. The All Iowa Opportunity Foster Care Grant is offered to students 18 through 23 years old who have been in the Iowa foster care system. Loan forgiveness programs for teachers and nurses are also established.

Commentary. The All Iowa Opportunity Scholarship Program provides a college opportunity for the neediest students with at least a 2.0 GPA. Members were concerned about the lack of a specific curriculum requirement, noting that the lack of core requirements discouraged students from taking the harder courses.

Actions. No action taken.

CREDIT UNION DIVISION, Debt Cancellation Products, 6/6/07 IAB, ARC 5930B, NOTICE.

Background. Credit unions may offer debt cancellation products pursuant to Code § 533.16(9)(b). Debt cancellation products are written contractual arrangements between a credit union and a borrower under which the credit union agrees to suspend or cancel all or part of the borrower's obligation upon the occurrence of a specified event. They are similar to insurance in that they may cover events such as death, disability, or involuntary unemployment.

Commentary. Division representatives stated the proposed rules were modeled on U.S. Department of the Treasury rules. The intent of this rulemaking is to provide specific guidelines regarding form and substance of disclosures to borrowers, and duties imposed on credit unions when providing these products. Members of the Committee questioned the practical difference between these products and insurance. The division acknowledged that coverage is similar to insurance; however, a debt cancellation product is offered by the credit union or financial institution itself, rather than through an insurance company. Similar products are already offered by nationally chartered credit unions. Members agreed that state-chartered credit unions should have similar authority. Members also expressed concern over the division's ability to provide oversight to ensure that disclosure requirements are met and that the agreements are voluntary. The division representative explained that enforcement of these rules will typically occur by examination of the disclosure records following a complaint or inquiry with the division.

Action. No action taken.

ECONOMIC DEVELOPMENT DEPARTMENT, Enterprise Zones, 6/6/07 IAB, ARC 6033B, NOTICE.

Background. The proposed amendments define "business closure" and "permanent layoff" and include a permanent layoff as additional criteria for establishing an enterprise zone. Additionally, the amendments prevent the closing business or businesses from being eligible to receive incentives or assistance provided under the program.

Commentary. Committee members expressed support for excluding a business that is closing or laying off workers from potential benefits of the program. Members expressed concern, however, over the possibility of businesses instituting layoffs that would fall short of the number of workers required to establish an enterprise zone. Members then questioned the department regarding the possibility of an enterprise zone being established through the cumulative effect of actions taken by many businesses in one area. The department representative stated that the current rules, written pursuant to Code chapter 15E, apply only to closures and layoffs of a single business and do not allow for a cumulative determination. The representative also stated that the enterprise zone program is designed for job creation while other programs focus on job retention.

Action. No action taken.

EDUCATION DEPARTMENT, Special Education, 6/6/07 IAC, ARC 5920B, NOTICE.

Background. This proposal rewrites existing rules implementing the state and federal special education program found in Code chapter 256B and 34 C.F.R. § 300.

Commentary. State and federal special education laws require that every school district must provide a "free appropriate public education" to any resident child under the age of 21 who has a disability requiring specially designed instruction to meet that child's unique needs. Under some circumstances, the age may be extended up to 24. The term "disability" is broadly defined to include physical or developmental disabilities and behavior disorders. The specially designed instruction can include classroom, home, hospital, institutional, or other instruction as required.

Action. No action taken.

ENVIRONMENTAL PROTECTION COMMISSION (EPC), Landfills, 7/4/07 IAB, ARC 5999B, ADOPTED.

Background. The EPC adopts new rules relating to the construction, operation, and closure of sanitary landfills. This regulatory program has not been significantly revised in a decade. The program is intended to control groundwater contamination from solid waste landfills. The rules implement the federal Resource Conservation and Recovery Act (RCRA) and the federal rules under that Act. Compliance with federal regulation is required for Iowa to obtain approval from the federal Environmental Protection Agency (EPA).

Commentary. The RCRA standards were initially implemented over 25 years ago; in 1991 new federal standards were established for municipal solid waste landfills. These new regulations established design, operating, and closure standards; restricted landfill locations; and required liners and groundwater monitoring. In 1997 the federal government approved Iowa's program, even though the Iowa program apparently did not follow the federal provisions. In 2002 a federal review determined that Iowa's rules needed to be revised to meet the 1991 standards.

Following extensive review and comment, a notice of intended action was published in December 2006. That proposal was controversial. At the Committee's January 2007 meeting, there was public comment both in support of and in opposition to this rule. Supporters noted that the current requirements have already been out of compliance with federal requirements for a decade. Department of Natural Resources representatives confirmed this statement, stating that federal officials had acquiesced, perhaps improperly, in that noncompliance. Opponents contended there is no scientific basis for many of the requirements and that the cost of the rules would be very high.

Although several issues relating to monitoring and closure were discussed, the most controversial element in this rulemaking is the requirement that landfill cells have a liner. There are 59 operational landfills and 22 are not operating over a constructed liner; some of those facilities are planning to close. Under the rules, landfills will have to construct a liner to continue accepting waste. The adopted rules offer a three-year grace period for this requirement. Opponents of the rules are basically landfills which comply with the previous rules but still have "air space" beyond the three-year grace period. Supporters of the rules maintain the rules will bring Iowa standards up to the level necessary to protect Iowa groundwater.

The Committee determined that any action on this rule should be deterred until the Committee's August 14, 2007, meeting. Committee members were unsure why the current landfill rules are no longer in compliance with the 1991 federal standards and requested that a representative of the federal EPA attend the meeting. Members also requested information on the financial impact on affected landfills. Members expressed the hope that all interested parties would use the available time to find acceptable compromises on this issue.

Action. No action taken; additional review scheduled for Tuesday, August 14, 2007, at 1:00 p.m.

HUMAN SERVICES DEPARTMENT, Personal Needs Allowance, 7/4/07 IAB, ARC 6019B, EMERGENCY.

Background. In 2006, H.F. 2319 directed the department to increase the personal needs allowance for Medicaid recipients in nursing facilities from \$30 to \$50 per month.

Commentary. In 2006, Committee members noted the increase did not also apply to Medicaid recipients in other types of residential institutions. As a result, 2007 Iowa Acts, H.F. 909, § 44, authorized the same increase for intermediate care facilities for persons with mental retardation (ICF/MR), intermediate care facilities for persons with mental illness (ICF/MI), and psychiatric medical institutions for children (PMICs). The legislation also states:

"A resident who has income of less than fifty dollars per month shall receive a supplement from the state in the amount necessary to receive a personal needs allowance of fifty dollars per month, *if funding is specifically appropriated for this purpose* [emphasis added]."

Commenters objected that only residents in care facilities received this special supplement. Department representatives responded that an earlier notice had incorrectly stated that an appropriation had been made, while in fact appropriation was made only for care facility residents. Some Committee members suggested that surplus funds could be moved from other areas to make the supplement available.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, Annual Medicaid Cards, 2/14/07 IAB, ARC 5716B, ADOPTED.

Background. Under this new rule, the department will issue Medicaid cards annually rather than monthly; the department does not determine eligibility on a monthly basis any longer and for that reason believes an annual card is appropriate. The card is similar in appearance to a credit card. The department anticipates a total annual savings of \$489,000.

Commentary. When initially reviewed by the Committee, the change was opposed by service providers. Under the rule, providers are responsible for determining patient eligibility by contacting the department on a monthly basis and providers contend this is a huge time and paperwork burden. At the June Committee meeting, department representatives conducted a live demonstration, using the internet to check client eligibility. Committee members believed the system worked efficiently.

At the July meeting there was no opposition to this filing.

Action. No action taken.

HUMAN SERVICES DEPARTMENT, Family-Centered Child Welfare Services; Family-Centered Services, 7/4/07 IAB, ARC 5937B, ADOPTED.

Background. This new program combines several existing services which provide assistance to victims of child abuse and children who have been adjudicated in need of assistance.

Commentary. At issue in this filing is the request for proposal (RFP) used to select service providers. Over 100 service providers are available, yet only 13 responded to the request, with three of the responders being newly created entities. Representatives of the service provider community contended that the RFP imposes too many restrictions on the provider for the \$440 monthly payment and stated that many service providers were afraid to bid on what they believe to be a money-losing contract. As an example, the representatives noted that the RFP called for two service providers per area, while only two areas had even three responders.

Action. The Committee took no action at this point, but agreed to review the program after it has been in operation. Further review will be scheduled for December or January.

LABOR SERVICES DIVISION, Shoot Fighting, 6/6/07 IAB, ARC 5929B and 5934B, NOTICE.

Background. Shoot fighting, also known as extreme fighting, combines boxing, judo, kickboxing, and wrestling. The Commissioner of Labor, acting as the Athletic Commissioner, regulates the sport pursuant to the provisions of Code chapter 90A.

Commentary. These proposals will hold the promoter responsible for the conduct of all officials and participants at a shoot fighting event and require the promoter to provide, at no cost to the fighter, both health and life insurance coverage on each fighter. Failure to provide proof of insurance is grounds to deny the issuance of a license for the event.

The Athletic Commissioner stated that he had proposed legislation regulating this type of fighting. Because that legislation did not pass, the division is now adopting rules to minimize the potential liability to the state from injuries suffered at these matches. The commissioner characterized shoot fighting as a "no holds barred" type of contest that could easily cause serious injury, and contrasted it with the more structured and regulated sport of boxing.

Representatives of the promoters expressed support for regulation of this sport and a willingness to pay fees required by a regulatory program. The representatives opposed holding the promoter generally responsible for the bouts, noting that it was the officials' responsibility to control the event.

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

NATURAL RESOURCE COMMISSION, Commercial Fishing on the Mississippi River, 6/20/07 IAB, ARC 5956B, NOTICE.

Background. The proposed amendments provide for five changes in the commercial fishing regulations on the Mississippi River: (1) no sturgeon less than 27 inches may be possessed in Iowa waters; (2) no sturgeon may be harvested from gear set prior to midnight on October 15; (3) the establishment of closed areas that prohibit the use of entanglement gear below locks and dams; (4) the establishment of restrictions on the use of entanglement gear; and (5) bowfin must remain intact until they reach the final processing facility or business.

Commentary. The commission representatives acknowledged that it had already received many comments regarding the proposed rules. Committee members stated that concerns have also been conveyed to them by their constituents. The commission representatives stated that the proposed rules, while similar to those in effect in Wisconsin and Illinois, would be more stringent. Concerns focused primarily on entanglement gear requirements and restrictions, particularly the attendance requirements. Members expressed concern about making Iowa's commercial fishermen less competitive as compared to out-of-state fishermen who fish the same areas of the Mississippi River. Members also encouraged the commission to work with interested parties to reach a consensus on the proposed amendments.

Action. No action taken.

NATURAL RESOURCE COMMISSION, Trapping Seasons for Bobcats, 7/4/07 IAC, ARC 6001B, ADOPTED.

Background. This rule creates a new bobcat season, allowing 150 bobcats to be trapped in 21 southern counties. All animals trapped after the limit has been reached must be turned over to the department with no penalties for the trapper. The bobcat season operates much the same as the otter season.

Commentary. Department representatives stated that the bobcat population was greater in southern Iowa and noted that there is a market for bobcat pelts, at roughly \$50 for each pelt. Opponents of the season responded that the surveys were not scientifically based and are not valid. The opponents noted that bobcats eat voles and other small vermin that damage crops. Department representatives told the Committee that the season would not have any significant affect on the bobcat population. The department representatives stated that the season would allow trappers to keep bobcats that would otherwise have been caught accidentally.

Action. No action taken.

PUBLIC HEALTH DEPARTMENT, Brain Injury Services Program, 6/6/07 IAB, ARC 5930B, NOTICE, and ARC 5914B, FILED EMERGENCY.

Background. The Committee previously reviewed the rules in draft form during its May 2007 meeting. The Brain Injury Services Program provides services, service funding, and other support for persons with a brain injury under either the waiver-eligible component or the cost-share component, as provided in Code § 135.22B. The waiver-eligible component provides services to individuals on a waiting list that qualify for the brain injury waiver but where the local match is not available through the Department of Human Services. Persons ineligible for the waiver or persons who qualify but for whom funding was not authorized are eligible for the cost-share component. Services are those available through the Department of Human Services Medicaid brain injury home and community-based services waiver. The share provided by the individual is determined on a sliding scale based upon the individual's family income. The individual's cost may not exceed 30 percent.

Commentary. Discussion of the rules centered primarily on the current status of the waiting list for services and how the current definition of "brain injury" affects the scope of the program and length of the waiting list. The department indicated that 344 people are currently on the waiting list and approximately 750 people per year sustain brain injuries in Iowa. In particular, members discussed the ramifications of modifying the definition of brain injury to include stroke victims. The department explained to the Committee that in order to receive federal funding, the department's definition must match the federal definition. Members also expressed concern with the inability of the department to deviate from the first-come-first-

serve waiting list, based on the severity of a particular brain injury.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 22 on Tuesday, August 14, 2007, at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Michael Duster, LSA Counsel, (515) 281-4800.

Internet Page: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

June 11, 2007

Chairperson: Senator Michael Connolly

Vice Chairperson: Representative Philip Wise

EDUCATIONAL EXAMINERS BOARD, Qualifications for School Nurses, SPECIAL REVIEW, EMERGENCY.

Background. This "emergency" filed rule was informally reviewed for discussion purposes only; formal review will occur on July 10, following actual publication. School nurses may practice in the school setting with either an endorsement or a "statement of professional recognition" (SPR). Under previous policy, a baccalaureate degree was not required. 2007 Iowa Acts, Senate File 277, changed the board's authority to issue an SPR. Effective July 1, 2007, a baccalaureate degree (i.e., an undergraduate college degree) is required for any SPR. The Act requires each school district to have a school nurse to provide health services. The nurse must hold an endorsement or a statement of professional recognition for school nurses. Under the Act, a nurse holding an SPR is defined as a "teacher" and is eligible for financial incentives offered by the teacher quality program.

Commentary. An analysis of the current educational level of the school nurses in Iowa was provided, revealing that 485 school nurses do not have a baccalaureate degree, almost half of the total number of school nurses. There was general discussion concerning the intent of the legislation, with some consensus that the legislation did not preclude these nurses from continuing to serve, but they are not eligible to participate in the teacher quality program. Committee members felt that the legislative intent of Senate File 277 is to limit the designation of "teacher" to those nurses who had attained a baccalaureate degree.

There was also discussion concerning the education of registered nurses, with community colleges educating nurses in a two year program and other institutions offering a four year baccalaureate program. Some nurses are under the now discontinued three-year hospital training program. It was noted these nurses could take additional classes to attain a baccalaureate degree, but that these programs are not locally available throughout the state. Committee members emphasized that two-year or three-year trained nurses provide skilled service in the public schools and that school boards could take on the responsibility to increase their pay.

Action. No action taken, additional review in July.

NATURAL RESOURCES DEPARTMENT, HUSH Program, 05/09/07 IAB, ARC 5872B, NOTICE.

Background. This program has operated informally for about four years and is now being finalized through rulemaking. Code §483A.8(1) requires deer hunters to pay a \$1 fee for the purpose of deer herd population management, including the "Help Us Stop Hunger" (HUSH) Program. This program is also subsidized by department trust funds as a means to reduce the deer population.

Commentary. Under the program, meat processors will accept the entire field-dressed carcass of a donated deer without fees or costs to donors. Processors will be reimbursed by the HUSH Program. If the processor determines the venison is in acceptable condition, the meat will be processed into pure ground venison with no additives, put into bags provided by the department, and frozen. A department representative noted that generally Department of Corrections institutions do not participate in the program, but one institution purchased carcasses for in-house processing.

Action. No action taken.

NATURAL RESOURCES DEPARTMENT, Bobcat Season, 05/09/07 IAB, ARC 5873B, NOTICE.

Background. Bobcats, in limited numbers, have been added to the trapping season for select Southern Iowa counties. The limits for bobcat trapping are set at one bobcat per individual trapper and a total of 150 for the whole of the state. This trapping season is modeled closely after the otter season.

Commentary. Members of the Committee questioned the impact of a trapping season on the bobcat population. Representatives of the Department of Natural Resources (DNR) reassured members that the current population of bobcats has increased to a size that the proposed trapping season would not have an impact. The DNR also commented

that the concerns over the proposed trapping season were made by the same individuals that expressed concern over the other season adopted the previous year.

Action. No action taken.

REGENTS BOARD, State Universities: Admission Criteria, 05/23/07 IAB, ARC 5893B, ADOPTED.

Background. Since the 1950s, the Board of Regents has maintained a policy which admitted any high school student graduating in the top half of the student's class.

Commentary. Beginning with the Fall 2009 academic term, admission decisions will be based on four factors: performance on standardized tests; high school grade point average; high school percentile rank in class; and number of high school courses completed in the core subject areas. These factors are used in a weighted formula to calculate a "Regent Admission Index" (RAI). Applicants with a total score of 245 gain automatic admission. The delayed effective date means that high school sophomores have two years to complete the core curriculum. Board representatives noted this process will only apply to students coming directly from high school. There will be a different set of requirements for nontraditional applicants, including transfers from community colleges, returning veterans, or adults changing careers.

The representatives stated that the proposal has been well received and that high school curricula are capable of meeting these requirements.

Action. No action taken.

PUBLIC SAFETY DEPARTMENT, Weapons Permits, 05/09/07 IAB, ARC 5856B, ADOPTED.

Background. This rule updates the department's existing procedure to obtain a weapons permit.

Commentary. Eligibility is based on an applicant being eighteen years old or older, not having a record of felonies or repeated acts of violence, not constituting a danger to people, and having no addiction to the use of alcohol or any controlled substance. Successful applicants must pass a criminal background check, attend a training program on handgun safety, and provide fingerprinting.

Approved training classes will be conducted by the Iowa Law Enforcement Academy, the National Rifle Association (NRA), a government military organization, or an approved private training provider. The department stated the goal of the rule is to provide easier access for military personnel to obtain a gun license.

Members of the Committee requested information on how the changes in the rules would affect the average person. The department stressed that this is not a new rule and that the modification would allow improved access to gun licenses and provide for a wallet-sized permit. Members also expressed some concern about using the NRA as an approved training site as it is a private organization. The department reassured that even though the NRA is a private organization, the training programs are of premier quality and the NRA has been used in other areas. Members of the Committee and the audience shared their concerns over the role a sheriff's discretion would play in the application process. The department and a representative of the Iowa Sheriffs and Deputies Association reiterated that sheriff's discretion is not new to the application process and is vital to its success.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Tuesday, July 10, 2007, and Wednesday, July 11, 2007, both days at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Person: Joe Royce, LSA Counsel, (515) 281-3084

Internet Page: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

May 9, 2007

Chairperson: Senator Mike Connolly

Vice Chairperson: Representative Philip Wise

COMMITTEE BUSINESS. Committee members elected Senator Mike Connolly as chairperson and Representative Phil Wise as vice chairperson. The terms run for two years, expiring at the Committee's May 2009 meeting.

HUMAN SERVICES DEPARTMENT, Elderly Waiver: Case Management Services, 4/11/07 IAB, ARC 5817B, ADOPTED.

Background. These rules were initially reviewed as an emergency filing in November 2006. The Medicaid Home and Community-Based Services Elderly Waiver (HCBS Elderly) provides case management services to assist individuals in gaining access to medical, social, and other needed services to maintain them in their own homes. Under these rules the maximum monthly cost per client for case management under HCBS Elderly is set at \$70.

Commentary. There was a general discussion concerning the reimbursement rates for this service and the role of the area agencies on aging in providing this service. Some Committee members suggested that a broader base of case

management providers is needed.

Action. No action.

PUBLIC HEALTH DEPARTMENT, Brain Injury Services, SPECIAL REVIEW, EMERGENCY.

Background. 2006 Iowa Acts, House File 2772, created the Brain Injury Services Program and empowered the department to adopt "emergency" rules, subject to review by the Committee.

Commentary. This program has several components. The waiver-eligible component provides services to individuals on a waiting list that qualify for the Medicaid Brain Injury Waiver but the local match is not available through the Department of Human Services. The cost-share component provides services to individuals who do not qualify fiscally or functionally for the Medicaid Brain Injury Waiver but are able to pay a cost share. Services are those available through the Department of Human Services Medicaid Brain Injury Home and Community-Based Services Waiver. The share provided by the individual is determined on a sliding scale based upon the individual's family income. That cost share cannot exceed 30 percent of the cost payable for the service. Committee members did not have any concerns with the emergency implementation of this program or with the substance of the program.

Action. No action taken.

RACING AND GAMING COMMISSION, Prehearing Suspension of Licenses, 1/17/07 IAB, ARC 5663B, CONTINUED FROM APRIL.

Background. Commission rules provide for the temporary suspension of a license prior to an evidentiary hearing when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted. At the Committee's April meeting members were concerned over the mandatory suspension, regardless of the occupation or whether any threat to the public health, safety, or welfare exists. Members believed that the statutory restriction needed to be recognized in the rules and requested that the commission add appropriate language to the rules.

Commentary. A commission representative proposed language to be added to the rules creating an "immediate danger" standard for temporary license suspensions. That language would limit temporary suspensions to situations where the alleged actions represent a present or imminent threat to the integrity of the industry; consumer confidence in the industry; or the health, safety, or welfare of the public. Legal counsel to the commission opined that rule change is not necessary in that track personnel do not have a legally protected property interest in the license. The commission representative noted that in the spirit of compromise the commission would consider adopting the proposed language, with a notice of intended action to be published in June.

Action. Further review in July.

RENEWABLE FUEL INFRASTRUCTURE BOARD, Waivers, 4/11/07 IAB, ARC 5834B, NOTICE.

Background. The Renewable Fuel Infrastructure Program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline, biodiesel, or biodiesel blended fuel. Code section 15G.204 specifically provides for a waiver, allowing grant recipients to petition the board for relief from grant repayment requirements.

Commentary. In February, Committee members expressed concern that no criteria were in place to evaluate waiver requests and ensure consistent and fair results. The board now proposes those criteria. Committee members noted the criteria are very complicated and suggested the criteria be simplified. Some members expressed concern that retailers are not enthusiastic supporters of E-85 gasoline and stated that waivers should be very limited. These members contended that E-85 gasoline needed to be aggressively promoted to encourage its use and thus avoid the need for waivers.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Monday, June 11, 2007, at 9:00 a.m. At that meeting the Department of Human Services will provide a demonstration of the new Medicaid eligibility card system.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Person: Joe Royce, LSA Counsel, (515) 281-3084

Internet Page: <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

April 13, 2007

Chairperson: Representative Philip Wise

Vice Chairperson: Senator John P. "Jack" Kibbie

HUMAN SERVICES DEPARTMENT, Annual Medicaid Cards, 2/14/07 IAB, ARC 5716B, NOTICE.

Background. The department proposes to issue Medicaid cards annually rather than monthly. The department does not determine eligibility on a monthly basis any longer, and for that reason believes an annual card is appropriate. The

department anticipates a total annual savings of \$489,000.

Commentary. The proposed change is opposed by service providers. Under the proposal providers would be responsible for determining patient eligibility by contacting the department on a monthly basis, and providers contend this is a huge time and paperwork burden. Supporters contend that the current system, where each Medicaid recipient in a family receives a monthly card, is very difficult to manage and that a single annual card for all family members will be much easier to manage. Department representatives stated the Medicaid card would be no different than any private insurance card—the service provider has no assurance that the card remains valid unless an immediate check is made.

Action. No action was taken, there will be additional review when the rules are adopted in final form.

PHARMACY BOARD, Pharmacist Discretion in Filling a Prescription, 2/28/07 IAB, ARC 5739B, NOTICE.

Background. Like all professional licensing boards, the Pharmacy Board maintains a code of ethics to regulate the professional behavior of the licensees. In this notice of intended action the board proposed ethical standards which in part contain a proposal for "conscientious objection and refusal". Under this concept a pharmacist may refuse to fill any prescription based on the pharmacist's ethical or moral beliefs.

Commentary. This issue was part of a nationwide controversy surrounding the use of an emergency contraceptive, the so-called "Plan B", which some contend is an abortifacient. Board representatives noted the purposes of the rule are to require a pharmacist to notify the pharmacist's employer prior to invoking a conscientious objection and to assist a patient to identify another pharmacy or other lawful source that may be able to provide the drug. Because of the controversy surrounding this proposal and the negative public reaction, the board has terminated this rulemaking.

Action. No action taken.

RACING AND GAMING COMMISSION, Prehearing Suspension of Licenses, 1/17/07 IAB, ARC 5663B, SELECTIVE REVIEW.

Background. The Racing and Gaming Commission requires a license for all occupations at Iowa's racetracks and casino occupations which the Commission believes require the safeguard of licensure. In fact, all occupations are licensed. Commission rules provide for the temporary suspension of a license, prior to an evidentiary hearing, when a licensee has been formally arrested or charged with a crime that would disqualify the person from holding a license if convicted.

Commentary. Opponents of the prehearing suspension policy noted that Iowa law, Code section 17A.18A, allowed temporary suspension only "to prevent or avoid the *immediate danger* to the public health, safety, or welfare." Committee members were concerned over the mandatory suspension, regardless of the occupation or whether any threat to the public health, safety, or welfare exists. Members believe that the statutory restriction should be recognized in the rules and requested that the Commission add appropriate language to the rules.

Action. Further review in May.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Tuesday, May 8, 2007, at 9:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Person: Joe Royce, LSA Counsel, (515) 281-3084

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

March 8, 2007

Chairperson: Representative Philip Wise

Vice Chairperson: Senator John P. "Jack" Kibbie

LABOR DIVISION, Regulation of Water Heaters in Public Places, 12/20/06 IAB, ARC 5619B, HELD OVER FROM JANUARY.

Background. This controversial proposal was initially reviewed in January. In part it provided that *all* water heaters used in places of public assembly, such as theaters, schools, casinos, or churches would be regulated and inspected by the division. Current regulation applies only to heaters larger than 50 gallons. Committee reaction to this proposal was uniformly negative and the members demanded a formal regulatory analysis of this proposal.

Commentary. At the division's request the Committee took up this issue again in March, in order to reconsider the January request for a regulatory analysis. A division representative noted that Code section 89.3(1) actually mandates the inspection of all water heaters. The representative further noted that water heaters are not subject to any national standard and that instances of catastrophic failure have occurred.

The division representative was not able to estimate how many heaters would be subject to the expanded regulation. The representative also stated that the proposal had been drafted without any input from this newly regulated community. Committee members voiced extreme concern over this new program, noting that the division did not have any estimate as to the scope or cost of this regulatory effort. Members were also concerned that no effort had been made to identify

members of the regulated community and to involve them in the rulemaking process.

Action. The division agreed to withdraw this proposal and sponsor legislation (H.S.B. 50, which became H.F. 368) to remove jurisdiction for these smaller water heaters from Code chapter 89.

PHYSICIAN ASSISTANT BOARD, Duties of a Physician Assistant, 2/14/07-2/28/07 IAB, ARC 5706B and 5725B, ADOPTED.

Background. Initially placed under notice in November 2006, these adopted rules relate to the duties that could be delegated to a physician assistant and the role of the supervising physician.

Commentary. The first rule provides that a physician assistant may be taught new procedures under either direct or remote supervision. Opponents in the medical community contended that any new procedure should be taught under the immediate supervision of the physician. The second change provides that both the physician and physician assistant have the responsibility to be aware of who is currently designated as the supervising physician over the physician assistant. Discussion revealed that in a clinic setting a number of physicians might be eligible to supervise an assistant; the rule ensures that the supervisory duties are clearly set out. The third revision modifies a current requirement which requires that a physician assistant must report any change in supervising physicians to the board within 90 days of that change. With this change the report must be made at the time of license renewal, but the assistant must maintain a list of supervising physicians, available to the board on request. All of these changes sparked opposition from the medical community. Committee members, however, were generally supportive of these changes and voiced support for the work of physician assistants.

Action. No action taken.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Friday, April 13, 2007, at 8:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

February 2, 2007

Chairperson: Representative Philip Wise

Vice Chairperson: Senator John P. "Jack" Kibbie

RENEWABLE FUEL INFRASTRUCTURE BOARD, Renewable Fuel Infrastructure Board, 1/17/07 IAB, ARC 5663B, EMERGENCY.

Background. Code chapter 15G creates the Renewable Fuel Infrastructure Program and Board; basic rules of organization and operation were both noticed and filed on an emergency basis in June 2006. The board is responsible for directing the Renewable Fuel Infrastructure Program. The program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel fuel.

Commentary. The Committee held a number of meetings concerning these rules. At this meeting the Committee members expressed some concerns about the availability of waivers of the repayment requirements. Code section 15G.204 specifically provides for a waiver allowing grant recipients to petition the board for relief from grant repayment requirements, but neither the statute nor the rules establish any procedures or criteria for the granting of a waiver.

Committee members expressed concern that the lack of criteria gives the board unlimited discretion to excuse retailers from their obligations under the grant agreement. Members felt that general criteria need to be established to channel the board's discretion and to give the petitioner some understanding concerning the considerations that will be taken into account when the board evaluates a waiver request. For that reason the Committee requested that both the Renewable Fuel Infrastructure Board and the Iowa Economic Development Board begin the development of criteria to establish general guidelines concerning the availability of waivers. The Committee also referred the issue to the General Assembly for informational purposes. That action does not delay implementation of these changes.

Action. General referral to the General Assembly; additional review at the Committee's April meeting.

HUMAN SERVICES DEPARTMENT, Home and Community-based Habilitation Services, 1/17/07 IAB, ARC 5650B, EMERGENCY.

Background. Federal Medicaid policy requires that services funded with federal money must be "rehabilitative services", i.e.; services which restore the health of the client. However, the federal Deficit Reduction Act of 2005 (DRA) allows some services to Medicaid clients who may lose services under the new Rehabilitative Services Program (RSP). This filing covers home and community-based long-term care services (HCBS) for Medicaid clients with mental health disabilities or chronic conditions.

Commentary. This emergency filing preserves habilitative services that are intended to maintain the current health status

of the client. This program is implemented on an emergency basis due to concerns that the federal government could demand repayment of Medicaid funds used under the earlier program to fund nonrehabilitative services.

The issue with the change is that while federal funding is preserved, it is not at the same level as the prior Medicaid program. The Fiscal Services Division of the Legislative Services Agency estimates an impact for FY 2007-2008 is estimated to be between \$1.4 million and \$3.2 million for the state and between \$5.5 million and \$13.0 million for the counties.

Action. General referral to the General Assembly.

HUMAN SERVICES DEPARTMENT, Dependent Adult Abuse: Confidentiality, 1/3/07 IAB, ARC 5653B, ADOPTED.

Background. This filing relates in part to access to the Dependent Adult Abuse Registry. It rescinds provisions that repeat Code language relating to access to dependent adult abuse information.

Commentary. This change sparked comment concerning the Code language itself.

Two code sections within Code chapter 235B are in conflict regarding access to confidential information. Code section 235B.10 creates a procedure allowing a person to examine dependent adult abuse information in the registry which refers to that person and to request correction or expungement of any error that person may find. On judicial review of that request the record and evidence is closed to all but the court and its officers, and access to the record and evidence is prohibited unless otherwise ordered by the court. Code section 235B.6 also limits access to this information, but it is not consistent with code section 235B.10 and is significantly broader in allowing access to courts, administrative agencies, and certain experts. Committee members felt that the policy on confidentiality should be consistent and referred this statutory discrepancy to the General Assembly.

Action. General referral to the General Assembly.

REVENUE DEPARTMENT, Property Tax: Evaluation of Commercial Property, 1/31/07 IAB, ARC 5685B, ADOPTED.

Background. Commercial property is taxed according to its value. At issue is whether "value" should be the actual use of the property or its highest and best use. The rules clarify that taxation will be based on actual use.

Commentary. The issue involved the valuation of golf courses, as demonstrated by the text of the rule itself: *"The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course shall be assessed and valued by the assessor as a golf course even though its highest and best potential use may be an industrial park or commercial development."*

This rulemaking is opposed by the Polk County Assessor, who argues that land poised for development was not being taxed at a rate that reflected its fair value, and that special valuation requirements should protect properties such as a golf course. Committee members felt that the rule is fair, noting that taxing land at its highest and best use could force a landowner into an unwilling sale, just to escape the burden of a high property tax.

Action. No action taken.

Committee Business. Representative Philip Wise was elected chairperson of the Administrative Rules Review Committee; newly appointed members are Representatives Philip Wise, David Jacoby, and Linda Upmeyer. Current membership on the Committee is:

Senator John P. "Jack" Kibbie, Vice Chairperson	Representative Philip Wise, Chairperson
Senator Michael Connolly	Representative Marcella Frevert
Senator Thomas Courtney	Representative David Heaton
Senator Paul McKinley	Representative David Jacoby
Senator James Seymour	Representative Linda Upmeyer

All terms expire April 30, 2007.

Representing the Governor's Office for the Committee will be the Governor's General Counsel, Mr. James Larew, and the Associate Counsel, Ms. Deborah Svec-Carstens.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Friday, March 2, 2007, at 8:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyas, LSA Counsel, (515) 281-4800

Internet Page: <http://www.legis.state.ia.us/asp/Committees/Committee.aspx?id=53>

ADMINISTRATIVE RULES REVIEW COMMITTEE

January 3, 2007

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Jack Kibbie

ECONOMIC DEVELOPMENT DEPARTMENT, Renewable fuel infrastructure board, 12/20/06 IAB, ARC 5608B,

EMERGENCY.

Background. 2006 Iowa Acts, chapter 1142, Division III, creates the Renewable Fuel Infrastructure Program and §34 of the Act called for emergency implementation of this grant program. Pursuant to this authority, rules of organization and operation were both noticed and filed on an emergency basis in June 2006.

Commentary. The board is responsible for directing the Renewable Fuel Infrastructure Program. The program provides financial incentives for gas stations to install the necessary tanks and equipment to store and dispense E-85 gasoline or biodiesel. Applications for assistance are first reviewed by the Underground Storage Tank Fund Board, which forwards its comments to the Renewable Fuel Infrastructure Board for final action. A board representative noted that skeletal rules were put in place by the department before the board was even appointed; and that when the board was formed in August it immediately began its work, with the first awards made in October 2006.

The main issue in this filing is the availability of waivers which would allow a retailer to cease marketing the product without repaying the grant back to the program. Section 30 of the Act specifically provides for a waiver, but neither the statute nor the rules establish any procedures or criteria for the handling of a waiver. Committee members expressed concern that the lack of criteria gave the board broad discretion to excuse retailers from their obligations under the grant agreement. The board representative responded that waiver criteria would be developed and speculated that waivers could be based on the number of years that the applicant had already been in the program along with proof of economic hardship.

A second concern is the statutory makeup of the board, with some committee members stating that representatives of petroleum fuel interests had a disproportionate membership on the board. Members noted this is a statutory issue and that it has been previously referred to the General Assembly by the committee.

Members noted with approval that an earlier provision for three year contracts had been modified to require five year contracts.

Action. No action taken, further review is anticipated in February 2007.

ENVIRONMENTAL PROTECTION COMMISSION, 12/4/06 IAB, ARC 5597B, NOTICE.

Background. The department proposes to revise its' rules regulating sanitary landfills; this regulatory program is intended to control groundwater contamination from solid waste landfills; this regulatory program is intended to control groundwater contamination from solid waste landfills. The existing rules have not been significantly amended in almost 10 years.

Commentary. The rules are intended to implement the federal Resource Conservation and Recovery Act (RCRA) and the federal rules implementing that Act. They implement the minimum federal standards established by the Environmental Protection Agency (EPA). Compliance with federal regulation is required for Iowa to obtain approval from the EPA. The rules require a quality control and assurance program for all new construction to ensure that the landfills are constructed in compliance with construction requirements specified in the rules. There are detailed site evaluation and construction requirements set out, as well as operational requirements for the day-to-day management of the facility.

Discussion. There was public comment both in support and in opposition to this rule. Supporters noted that the current requirements have already been out of compliance with federal requirements for a decade. Department representatives confirmed this statement, stating that federal officials had acquiesced, perhaps improperly, in that non-compliance. Opponents contended there is no scientific basis for many of the requirements and that the cost of the rules would be high. A main component of the new rules is the requirement that each landfill have a liner to prevent leaching; 13 of Iowa's 59 landfills do not have the required liners and the cost of adding them at existing sites poses a significant cost. Department representatives stated that in response to public concerns the department would hold the public comment period open through mid-February to allow time for additional discussion and consideration.

Department representatives distributed a regulatory analysis outlining the impact of these proposals, both in terms of required upgrades, operating requirements, and additional post-closure costs. Committee members express concern over these costs and the immediate need for new construction once the rules are in place.

Action: No action taken, addition review is likely when the rule is adopted in final form.

LABOR DIVISION, Regulation of water heaters in public places, 12/20/06 IAB, ARC 5619B, NOTICE.

Background. This proposal contains a rewrite of the safety and health regulations applicable to water heaters; it also would extend safety and health regulations and inspections to certain water heaters that are currently not being inspected and regulated.

Commentary. Under this proposal all water heaters used in places of public assembly, such as theaters, schools, casinos, or churches would be regulated and inspected by the division; current regulation applies only to heaters larger than 50 gallons. A department representative noted that these water heaters are not subject to any national standard and that instances of catastrophic failure have occurred. The agency representative was not able to estimate how many heaters would be subject to the expanded regulation; the representative also stated that the proposal had been drafted without any input from this newly regulated community.

Discussion. Committee members voiced extreme concern over this new program, noting that the division did not have even a guess as to the scope or cost of this regulatory effort. Members were also concerned that no effort had been made

to identify members of the regulated community and to involve them in the rulemaking process.

Action. Pursuant to Code §17A.4A the committee voted to demand a regulatory analysis of this proposal, in order to determine its' scope and impact. When an analysis is requested the rule cannot be adopted in final form until twenty days after a summary of the analysis is published in the Iowa Administrative Bulletin (IAB). More specifically, for that additional period the agency must continue to accept written comments and requests for oral presentation. The summary in the IAB must identify the means available for persons who wish to comment on that analysis. The analysis will also be reviewed by the committee.

Next Meeting. The next Committee meeting will be held in Senate Committee Room 116 on Friday, February 2 at 8:00 a.m.

LSA Staff: Kathie West, Administrative Code Editor, (515) 281-3355

Contact Persons: Joe Royce, LSA Counsel, (515) 281-3084; Emily Gardyasz, LSA Counsel, (515) 281-4800

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