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## LEGAL UPDATE

Legal Services Division



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### ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — DECEMBER 8, 2020

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **EDUCATIONAL EXAMINERS BOARD, *Dyslexia Specialist Endorsement*, 12/2/20 IAB, ARC 5293C, NOTICE.**

**Background.** This rulemaking, as directed by 2020 Iowa Acts, Senate File 2356, is a collaborative effort between the board and the Iowa Reading Research Center and creates a dyslexia specialist endorsement for licensed Iowa teachers.

**Commentary.** Committee members asked if the board has either a waiver process or a grandfather provision for teachers who already have a dyslexia specialist endorsement from another state. Ms. Joanne Tubbs, speaking on behalf of the board, stated that the board is willing to consider a waiver process or a grandfather provision before the rulemaking is final. Ms. Tubbs also stated that the board is interested in collaborating with the Iowa Reading Research Center to create language to recognize other certification pathways that teachers may have completed prior to the endorsement becoming available in Iowa.

Ms. Katie Greving, speaking on behalf of Decoding Dyslexia Iowa, stated that the dyslexia specialist endorsement was the recommendation of the dyslexia task force, which is comprised of educators, parents, and other stakeholders, and is reflective of what Iowans want. Ms. Greving stated that while her organization is open to looking at other ways for teachers that have comparable training to obtain the dyslexia specialist endorsement, she cautioned the board against accepting any type of training that is not specific to dyslexia.

Ms. Lacey Wolf, speaking on behalf of the Iowa Speech Language Hearing Association, stated that speech pathologists are experts in disordered language, which includes reading, writing, listening, and speaking. Ms. Wolf stated that speech pathologists already work with children that have dyslexia in their homes, in schools, and in private practice. Ms. Wolf expressed concern that the rulemaking will impact practicing speech pathologists' ability to continue to serve children with dyslexia. Ms. Wolf stated that the association has reviewed the rulemaking and will submit comments to the board.

**Action.** No action taken.

#### **EDUCATIONAL EXAMINERS BOARD, *Substitute Authorizations*, 12/2/20 IAB, ARC 5303C, FILED.**

**Background.** This rulemaking adds substitute authority to holders of the career and technical education authorization, the professional service license, and the native language teaching authorization. The rulemaking increases the number of days that substitute authorization holders may substitute in a classroom. The rulemaking changes the requirement for an individual to be eligible for a substitute

authorization from a bachelor's degree to an associate degree, or 60 semester hours of college coursework from a regionally accredited institution. The rulemaking allows for reciprocity in certain circumstances and adds a substitute authorization as an area of concentration for paraeducators. Based on public comment, the board amended the rulemaking to increase the time limit for holders of a substitute authorization to serve in one assignment from no more than 5 consecutive days, or 10 days in a 30-day period, to no more than 10 consecutive days.

**Commentary.** Committee members expressed concern that the rulemaking reduces the quality of teachers and is not the correct solution to address the teacher shortage. Ms. Darcy Hathaway, speaking on behalf of the board, stated that the board feels the rulemaking strikes a balance by limiting the number of days a substitute can teach, while still allowing the districts flexibility. Ms. Tubbs stated that the board is continually trying to align with national standards. Ms. Hathaway, in response to questions from members, confirmed that the rulemaking does not require an individual to obtain a minimum grade point average or obtain a degree in order to qualify for a substitute authorization. Ms. Hathaway also confirmed that a substitute can work an assignment for nine days, not work that assignment for one day, return to the same assignment to substitute for an additional nine days, and this can be repeated indefinitely. In addition, Ms. Hathaway confirmed that there is not a limit on the total number of days an individual with a substitute authorization can act as a substitute.

Ms. Melissa Peterson, speaking on behalf of the Iowa State Education Association, expressed concern that the achievement gap is being exacerbated by the pandemic, and that the rulemaking may further erode licensure standards and contribute to an increase in the achievement gap. Ms. Peterson emphasized the need to have qualified teachers and to maintain the quality of education in Iowa.

Ms. Emily Piper, representing the Iowa Association of School Boards, expressed support for the rulemaking. The association, however, still has concerns about the length of time an individual can serve as a substitute. Ms. Piper stated that some schools are requesting waivers from the Board of Education to be allowed to move to remote learning because of staffing shortages.

Committee members expressed concern that the rulemaking is a short-term solution and the real problem—teacher shortages—needs to be addressed legislatively and not by rulemaking. Members also stated that the role of substitute teachers should not be diminished. Members reiterated the difficulties districts are having finding substitute teachers.

**Action.** A motion for a session delay carried on an 8-2 roll call vote.

**RACING AND GAMING COMMISSION, *Waivers; Petitions for Rule Making; Licensee Responsibilities; Sports and Other Wagering; Gambling Games; Electronic Wagering Accounts; Fantasy Sports Contests, 11/18/20 IAB, ARC 5269C, NOTICE.***

**Background.** This rulemaking includes a variety of amendments concerning electronic wagering, sports wagering, fantasy sports, commission procedures relating to rules, and other matters.

**Commentary.** Committee members asked about the status of possible revisions to the language of items 17 and 19 of the rulemaking, regarding sports wagering. Mr. Brian Ohorilko, speaking on behalf of the commission, explained that revised language based on feedback from industry stakeholders had been shared with those stakeholders, and the commission is still working with those stakeholders to resolve various outstanding issues. Members asked for clarification regarding the requirement in the revised language that an agreement be shared with the commission, as well as the format of the agreement. He confirmed that the agreement will not be a formal contract, as the commission, after consultation with its counsel and the Attorney General's Office, only wants to be able to audit the revenue that is the subject of the agreement, and the format of the agreement is not a concern. He explained that the agreement would only consist of responses to three questions. Members suggested that a uniform, publicly available form might be sufficient if all that is needed is responses to three questions.

Committee members inquired how legislation authorizing portions of the rulemaking can be implemented on its January 1, 2021, effective date, when the rulemaking is only on notice. Mr. Ohorilko explained that the rulemaking is not necessary to implement the legislation, which will be implemented on time based on existing rules. He explained that the rulemaking pertains to other related matters. Members asked if the rulemaking is implementing legislation from 2019. He explained that the 2019 legislation was implemented by prior rulemaking. Members stated that portions of the rulemaking implementing 2019 legislation should have been completed sooner and expressed hope that the adopted rulemaking, with resolution of the concerns regarding agreements, would be completed soon.

Mr. Wes Ehrecke, speaking on behalf of the Iowa Gaming Association, expressed support overall for the rulemaking, but also expressed support for adding three additional options for allocation of revenue, as provided in revised language the commission has been working on with stakeholders. He stated that stakeholders and the commission are working toward resolution regarding the format of agreements submitted to the commission and options for allocation of revenue.

**Action.** No action taken.

**DEPARTMENT OF PUBLIC SAFETY, *Standards for Electrical Work—2020 National Electrical Code, 11/18/20 IAB, ARC 5287C, ADOPTED.***

**Background.** This rulemaking updates the Electrical Examining Board's adoption by reference of the National Electrical Code (NEC) from the 2017 Edition of the NEC to the 2020 edition. The rulemaking amends the adoption by reference to remove a new requirement for ground fault circuit interrupters (GFCIs) for 250-volt receptacles for electrical plugs or similar devices.

**Commentary.** Committee members asked why the requirement for GFCIs was removed. Mr. Brian Young, speaking on behalf of the board, explained that affected stakeholders were concerned about the compatibility of devices that would be plugged into GFCIs. He stated that the Home Builders Association of Iowa had opposed removal of the requirement due to increased expense to consumers purchasing houses. Members asked if there were concerns about safety as well. He explained that GFCIs do prevent injuries, but the board had considered data on such injuries and found that no injuries have occurred in Iowa due to a lack of GFCIs.

Mr. Brett Larson, speaking on behalf of Schneider Electric, explained that he had been involved with the development of the language concerning GFCIs in the 2020 edition of the NEC. He stated that there have been several deaths implicated by GFCIs in residential homes, including three children, and those were considered when the new NEC language was drafted. He urged that NEC language on GFCIs be adopted by the board without amendments. Committee members asked if GFCIs are compatible with a range that someone might buy at a store, and he stated they would be, if wired correctly. Members asked for further clarification on where a GFCI might be located and how it would function. He explained that it would be located near the circuit breakers in a home and would prevent electrocution if a live conductor is touched by removing the voltage. He explained that a GFCI provides additional protection compared to a typical circuit breaker. A circuit breaker provides overload protection, while a GFCI electronically detects differential currents and deenergizes a circuit if there is a possible electrocution hazard. Members asked if GFCIs may trip more than is needed. He explained that GFCIs have been on the market since the early 1970s, and "nuisance" tripping, meaning unnecessary tripping, has not been an issue; a GFCI will only trip if there is a safety issue. Members asked if the GFCI requirement was only for new housing and what percentage of new housing would be affected. He stated the requirement would only be for new housing. He was unsure what percentage would be affected, but described various scenarios where GFCIs would be necessary.

Mr. Tim McClintock, speaking on behalf of the National Electrical Manufacturers Association, expressed support for adopting the 2020 edition of the NEC without amendments. He stated that incidents such as the deaths described by Mr. Larson can be prevented with GFCIs. He stated that GFCIs have a proven record backed on data published by the United States Consumer Product Safety Commission. Members

asked what the process is for incorporating technology such as GFCIs into the NEC. He stated that the process of developing the NEC is transparent, balanced, and accredited by the American National Standards Institute. He stated that GFCIs are already required in some instances such as hot tubs.

Committee members asked if there is a difference between 125-volt circuits and 250-volt circuits for purposes of GFCIs. Mr. Larson explained that in practice, the technology is largely the same in either case. Members asked what the additional cost to homeowners for the GFCI requirement would be, given that there are safety matters to consider as well. Mr. McClintock did not know, but stated that Minnesota recently has done a cost impact analysis of the entire 2020 edition of the NEC, although he did not know what the results had been.

Committee members questioned why the GFCI requirement needed to be removed when the technology has existed since the 1970s and has been proven to be safe. Mr. Young stated that the board is aware of the safety concerns that might be mitigated by GFCIs, but is concerned about compatibility. He stated that there is no question that GFCIs will function correctly given how long the technology has existed. He explained that the concern is with the devices that will be plugged into GFCIs. He said one concern is moisture collecting on the heating element of an electric range, causing a nuisance trip. Another concern is whether compressors on high-efficiency air conditioning units made by Peacock Electric will hold if a GFCI is connected to the unit. Members asked if a GFCI would be compatible with most home circuit breakers, and he said that it would. Members stated that an online search indicated that a GFCI for a 250-volt device would cost around \$100-\$125. Mr. Larson explained that there is a process to amend the NEC between three-year code cycles as needed, and this had been done to account for the new, high-efficiency air conditioning units Mr. Young referenced.

**Action.** A motion for a 70-day delay on ARC 5287C carried on a 9-0 roll call vote.

**Next Meeting.** The next committee meeting will be held in Room 103, Statehouse, on Friday, January 8, 2020, beginning at 9:00 a.m. Instructions for participation by videoconference can be found at the Committee's Internet site below.

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