

2018 Government Practice Seminar

LEGISLATIVE UPDATE ISBA GOVERNMENT PRACTICE SECTION

8:30 a.m. - 9:00 a.m.



Presented by
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FRIDAY, MAY 4, 2018

**2018 LEGISLATIVE UPDATE
ISBA GOVERNMENT PRACTICE SECTION**

May 4, 2018

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2018 LEGISLATIVE UPDATE

I. LEGISLATORS AND COMMITTEE INFORMATION

A. Political Composition of the Iowa General Assembly

SENATE

1. 20 Democrats, 29 Republicans, 1 Independent
2. Senate Leadership:
 - a. Jack Whitver (R-Ankeny), Majority Leader
 - b. Charles Schneider (R- West Des Moines), President
 - c. Janet Petersen (D-Des Moines), Minority Leader

HOUSE OF REPRESENTATIVES

1. 59 Republicans, 41 Democrats
2. House Leadership:
 - a. Linda Upmeyer (R-Clear Lake), Speaker
 - b. Matt Windschitl (R- Missouri Valley), Speaker Pro Tempore
 - c. Chris Hagenow (R-Windsor Heights), Majority Leader
 - d. Mark Smith (D-Marshalltown), Minority Leader

B. 2018 Lawyer Legislators

House:

HD47	R	Rep. Chip Baltimore*
HD25	R	Rep. Stan Gustafson
HD43	R	Rep. Chris Hagenow
HD02	R	Rep. Megan Jones
HD33	D	Rep. Brian Meyer
HD09	D	Rep. Helen Miller*
HD41	D	Rep. Jo Oldson
HD31	D	Rep. Rick Olson
HD52	D	Rep. Todd Prichard
HD98	D	Rep. Mary Wolfe
HD22	R	Rep. Jon Jacobson
HD58	R	Rep. Andy McKean

*Retiring after the 2018 Session

Senate:

SD33	D	Sen. Rob Hogg
SD13	R	Sen. Julian Garrett
SD22	R	Sen. Charles Schneider
SD19	R	Sen. Jack Whitver
SD16	D	Sen. Nate Boulton
SD3	R	Sen. Jim Carlin

C. **Judiciary Committee Members**

SENATE

Brad Zaun, Chair Dan Dawson, Vice Chair Rich Taylor, Ranking Member Tony Bisignano Nate Boulton	Julian Garrett Kevin Kinney Janet Petersen Charles Schneider Jason Schultz	Tom Shipley Amy Sinclair
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HOUSE OF REPRESENTATIVES

Zach Nunn, Chair Greg Heartsill, Vice Chair Chip Baltimore Mary Wolfe, Ranking Member Liz Bennett Jacob Bossman Stan Gustafson Lee Hein	Ashley Hinson Megan Jones Kevin Koester Vicki Lensing Andy McKean Brian Meyer Jo Oldson	Rick Olson Ross Paustian Ken Rizer Ras Smith Beth Wessel-Kroeschell Matt Windschitl
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D. **Justice Systems Appropriations Subcommittee Members**

SENATE

Mark Chelgren, Chair
Dan Dawson, Vice Chair
Bob Dvorsky, Ranking Member
Rob Hogg
Julian Garret

HOUSE OF REPRESENTATIVES

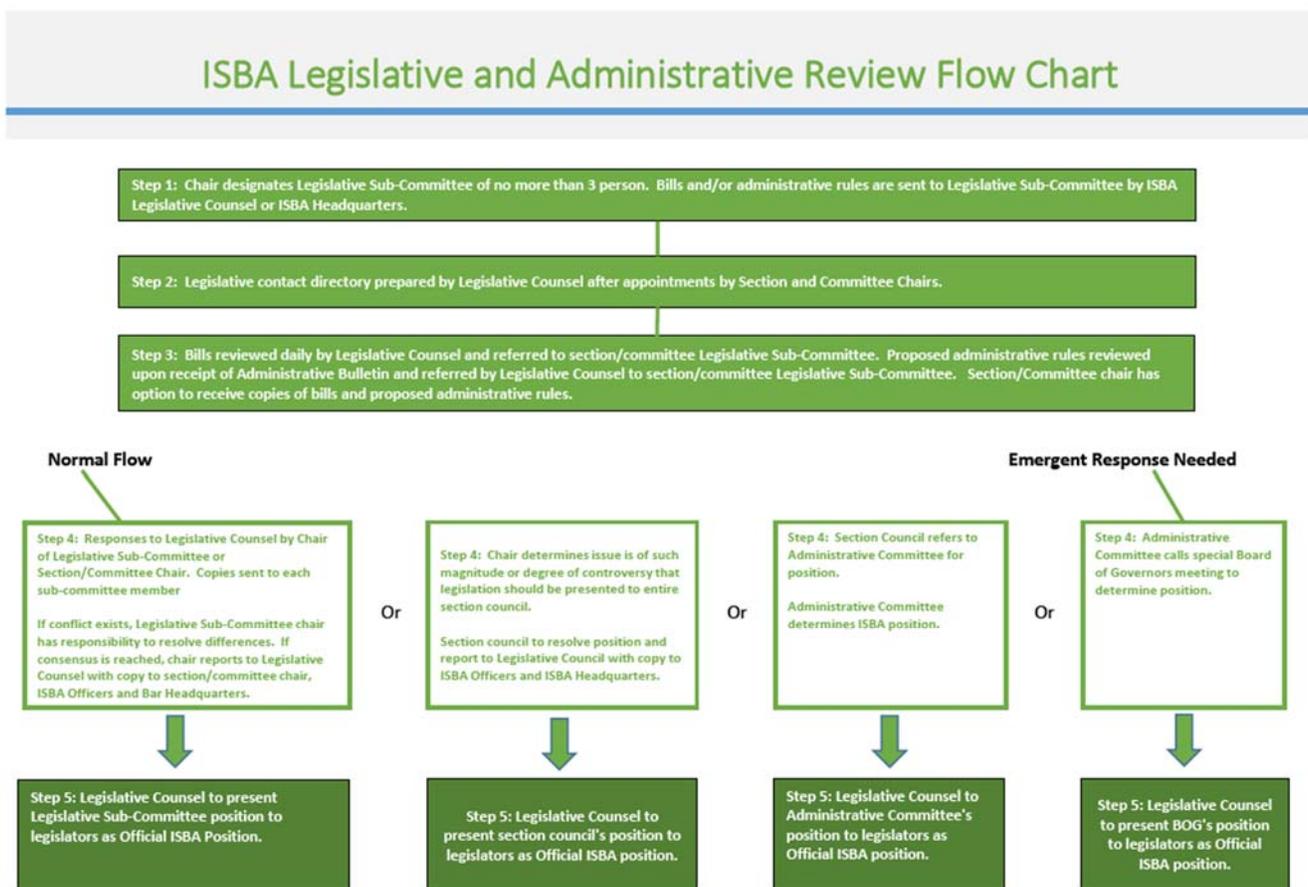
Gary Worthan, Chair
David Sieck, Vice Chair
Wes Breckenridge, Ranking Member
Marti Anderson
Jacob Bossman
Ashley Hinson
Chuck Holz
Tim Kacena
Jerry Kearns

Affirmative legislative program

The ISBA Board of Governors (BOG) has approved the ISBA legislative proposals for the 2018 session. Legislative proposals are prepared by various sections, presented to the BOG for approval, and adopted as a part of the ISBA legislative program. A chart outlining the ISBA affirmative legislative program appears starting on page seven for your review.

The ISBA has one of the most aggressive affirmative programs of any interest group in the state. Normally, the ISBA has anywhere from 15 to 20 proposals each legislative session. The Real Estate and Title Law, Business Law, and Probate, Trust & Estate Planning Sections are among the ISBA sections that had successful legislative proposals for this session.

Below is a chart outlining the ISBA Legislative and Review Process that is utilized throughout session.



**II. IOWA STATE BAR ASSOCIATION
2018 Affirmative Legislative Program**

Bill No.	Subject	Bill Description	Bill Status
SF 2314	Business Law Technical Changes	Amends §504.832 to add an explicit reference to section §504.836 authorizing a safe harbor for business opportunities. Amends §491.16A to include §§490.860 through 490.870 as these sections were not picked up when the Iowa Business Corporation Act was last amended. Clarifies language in Code §§ 9H.1 and 9H.4 regarding nonprofit corporations. The clarification is simply to ensure that all previous nonprofit chapters are included within the definition and restrictions of the chapter. Iowa's nonprofit chapter has been Chapter 504, 504A, and returned to 504.	Sent to Governor
SF 2139	Waiver of Spousal Share	Amends the Iowa Uniform Power of Attorney Act by adding a new subsection (10) to 633B.204 to clarify that an agent under a power of attorney may waive or relinquish a spousal right, homestead, and elective share if the principal has granted the agent Gen. Powers under the real property section 204 to 633B.	Signed by Governor Reynolds on 3/28/2018
HF 639	Calculation of Probate Court Costs	Relates to how the clerk of probate court determines and collects charges regarding services provided in probate matters. Excludes from the determination of court costs property over which the court lacks probate jurisdiction and for which the clerk renders no services. Specifies that for purposes of calculating the costs for other services performed by the court in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, the value of such a person's personal property and real estate is equal to the gross assets of the estate listed in the probate inventory minus, unless the proceeds of the gross assets are payable to the estate, joint tenancy property, transfers made during such person's lifetime such as to a revocable trust, and assets payable to beneficiaries.	No Activity in 2018
SF 2098	Conforming Probate Code to EDMS Standards	Conforms old probate statutes with EDMS standards and procedures. Amends §633.22 (Probate Powers of Clerk), Amends §633.27 (Probate Docket), Deletes §633.72 (Manner of Service), Amends §633.82 (Designation of Attorney), and Amends §633.418 (Form and Verification of Claims).	Signed by Governor Reynolds on 3/28/2018

SF 2099	Small Estate Changes	Amend §635.7 to clarify that, when the Personal Representative files a statement of conversion to or from small estate administration, the Clerk will make the conversion without court order; and amend §635.8 to provide clarification to the procedure for closing by sworn statement.	In House Awaiting floor vote on Senate Amendment
SF 2234/ HF 2229	Revised Calculation of Probate Court Fees	Code §633.31 is currently being applied inconsistently throughout the state. There are now several district court cases declaring the clerks in at least six counties to be calculating court fees inappropriately. The bill addresses how the clerk of probate court determines and collects charges in connection with services provided in probate matters. Excludes from the determination of court fees property over which the court lacks probate jurisdiction and for which the clerk renders no services. Increases fees in §633.31 to keep impact of change in treatment of non-probate assets revenue neutral to the state by striking the existing fee structure and creating at 0.25% administration fee. The legislation also creates a \$185.00 filing fee while removing many of the individual charges associated with probate.	Senate – Awaiting Ways and Means Committee Vote House – On Calendar Eligible for floor debate
SSB 3011/ HSB 606	Funeral Directives	Funeral and burial costs are paid from a decedent's estate, but the decedent is not given a say in the funeral and burial process. The proposal will allow a person to define "reasonable funeral and burial costs" so that an heir cannot subvert the person's testamentary intent.	Did not advance this session.
HF 2125	Very Small Estates	Amends Code § 633.356 addressing the distribution of property by affidavit for a very small estate. The legislation increases the amount of a qualifying estate from \$25,000 to \$50,000. Also adds to the current requirements of the affidavit the following: that no debt is owed to the Iowa Department of Human Services for reimbursement of Medicaid benefits, or if there is it will be paid to the extent of the funds received; that no inheritance taxes are owed; and that creditors will be paid to the extent of funds received pursuant to the affidavit.	Signed by Governor Reynolds on 3/28/2018
SF 2303	Deferred Payment of Taxes – Options to Bonding/	Amends §450.48 to clarify satisfactory security to the Department of Revenue to include but not be limited to bank or securities accounts with an irrevocable pay on death or transfer on death provision naming the department of revenue, an escrow agreement with an attorney under which the funds will be held in the attorney's trust account, or the lien imposed by the chapter.	Sent to Governor

SSB 1090	Rule Against Perpetuities	The bill creates an exception to the rule against perpetuities if the Trustor explicitly suspends the rule and if the Trustee has the power to sell trust assets.	No activity in 2018
HF 2318	Redemption from Tax Sale of Property Owned by Persons with Disabilities	Remedies issues arising from Iowa Court of Appeals decision <i>Firestone v. FT13</i> (Filed 4-30-14) relating to redemption issues arising from ownership of property by minors or persons of unsound mind.	Signed by Governor Reynolds on 3/28/2018
HF 2232	Requirements for Timely Filing of Releases or Satisfactions of Mortgages	Remedies ambiguities and inconsistencies in existing statutes & provides remedies for failure of mortgagees to issue releases of mortgages.	Signed by Governor Reynolds on 3/28/2018
SF 2175	Real Estate Partitions	This bill completely reorganizes and renumbers Iowa Code chapter 651, and repeals Division XII of the Iowa Rules of Civil Procedure governing partition procedures. The proposed legislation divides chapter 651 procedures into two divisions, general procedures applicable to all partitions and special procedures applicable to “heirs property,” partitions. This bill adds a definition section, new sections clarifying court procedures governing the initial decree, the appointment of a judicial referee, the appraisal order, and the final determination of real property value. Finally, this bill specifically authorizes the equitable remedy known as “owelty” in Iowa partition actions and provides that attorney fees in partition actions are to be fixed by the court in a reasonable manner and taxed as part of the court costs.	Signed by Governor Reynolds on 4/11/2018
HSB 63	Forcible Entry & Detainer Actions After Forfeiture of Real Estate Contracts	Makes changes to procedures for eviction after forfeiture of a real estate contract. Grants statutory authority under Code Chapter 648 for a vendor in a real estate installment contract to seek Forcible Entry & Detainer action against holdover vendee who fails to vacate after forfeiture proceedings are complete, while affording holdover vendees proper due process. Allows small claims magistrates to hold preliminary hearings in forfeiture cases and to enter judgments of removal only if the defendant defaults or appears and does not raise facts which would constitute a defense to eviction.	No Activity in 2018

In addition to the above legislative proposals, the Iowa State Bar Association supports the following positions as a part of its 2018 Affirmative Legislative Program:

- Full funding of indigent defense and adoption of legislation providing for \$5.00 per hour increase with an automatic cost of living increase in indigent defense fees.
- Full Funding of the Judicial Branch.
- Full funding for Legal Services.
- Full funding of the IA Secretary of State's Office as requested by IA Secretary of State Paul Pate.
- Full funding for the Office of Substitute Decision Maker to protect the interests of Iowans who have no one else to manage their financial and health care needs.
- Support child abuse prevention and treatment efforts and funding for child abuse prevention and treatment.
- Oppose the legalization of title insurance.
 - Will monitor issues regarding lawyer abstracting under Iowa Title Guaranty.
- Oppose absolute immunity legislation.

Iowa Judicial Branch FY 19 Budget Request

FY 18 Appropriation for operations:

\$175,686,612

For the second consecutive year, the Judicial Branch implemented a hiring freeze, held open judicial vacancies, deferred technology projects, and instituted a moratorium on the expansion of specialty courts in order to balance the budget. There are 68 vacant positions due to the freeze increasing the number of unfilled positions to 115, including 11 judicial officers. The FY 19 budget request does not include funding for an additional 67 positions eliminated last year. In total, the Iowa Judicial Branch has 10% fewer employees than in FY 17.

Fiscal Year 2019 Budget Request	Requirements	Purpose	Requested amount
<p>Delivery of Essential Services in all 99 Counties</p> <ul style="list-style-type: none"> • Fill 115 vacant positions, including 11 judicial officers, and 20 juvenile court officers • Continued operation of 47 specialty courts 	<input checked="" type="checkbox"/> Statutory <input checked="" type="checkbox"/> Constitutional <input checked="" type="checkbox"/> Unduplicated	Judicial Branch employees in courthouses across Iowa provide the following services: collect fines, fees and restitution, assist Iowans with their legal disputes, maintain all documents filed with the court, schedule all proceedings, assist jurors, keep the official record of all proceedings, and provide the ongoing maintenance and support of eFile, online fine payment and Iowa Courts Online. Judges resolve Iowans' legal disputes. Juvenile Court Officers target criminogenic behaviors using the Iowa delinquency assessment. Increasing the dosage of evidenced based practices creates a reduction in recidivism, safer neighborhoods, and productive individuals, families, and communities.	\$6,755,291
<p>Access to Court Records & Protection of Personal Information</p> <ul style="list-style-type: none"> • Information security and infrastructure projects including cybersecurity framework • Statewide conversion of historic paper inventory to digital storage • Online access to justice portal • Enhanced jury management software 	<input checked="" type="checkbox"/> Statutory <input checked="" type="checkbox"/> Constitutional <input checked="" type="checkbox"/> Unduplicated	The Judicial Branch has an obligation to protect the personal information of Iowans in the over 20 million documents filed and stored electronically. Whether from a security breach or a natural disaster, any disruption to the case management system and eFile system will impact operations and the ability of the Judicial Branch to provide justice. Any disruption would greatly affect judges, all other court personnel, the public, attorneys, and numerous state agencies. The continued operation of the Judicial Branch depends on the ability to replicate IT systems and data in real time.	\$6,500,000
<p>Specialty Courts Study</p> <ul style="list-style-type: none"> • Evaluate the structure and practices of existing specialty courts to replicate the services 	<input checked="" type="checkbox"/> Statutory <input checked="" type="checkbox"/> Constitutional <input checked="" type="checkbox"/> Unduplicated	Conduct an independent review and assessment of all 47 specialty courts. Evaluate existing specialty courts to ensure they are following evidence-based practices and maximizing cost	\$85,424

statewide		effectiveness.	
Evaluate Digital Audio Recording in targeted District Associate Courts <ul style="list-style-type: none"> Evaluate digital audio recording in targeted courtrooms to address court reporter shortage 	<input checked="" type="checkbox"/> Statutory <input checked="" type="checkbox"/> Unduplicated	This targeted program is not to remove court reporters from the courtroom but to fill in the gaps where there are scheduled court proceedings but no court reporters to make the record. The Iowa Code requires court reporters to keep the official record of hearings and court proceedings. There are 6 court reporter positions that have been vacant for over one year and 12 total current court reporter vacancies.	\$500,000
Total Operations Request			\$13,840,715
Total Operations Budget			\$189,527,327
% Increase			7.9%

*The FY 18 appropriation of \$3.1 million for the Jury and Witness Fund is not included in this information.

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III. BILLS OF INTEREST PASSED DURING 2018 LEGISLATIVE SESSION

GOVERNMENT PRACTICE

- HF 2233** Public Construction Mechanic's Liens A bill for an act relating to mechanic's liens and public construction liens.. Signed on 4/10/18. Effective Date 7/1/18.
- HF 2256** County Engineer Reports. A bill for an act relating to the submission of certain reports by the department of transportation and county engineers. Signed on 4/4/18. Effective Date 7/1/18.
- HF 2258** Flood Mitigation Costs. A bill for an act relating to the uses of remitted sales tax revenue and moneys from the flood mitigation fund under the flood mitigation program and including applicability provisions. Specifically, allows the costs incurred by a government after the approval of a flood control/mitigation projection, including repayment of funds advanced internally or to pay for bonds, to the reimbursements authorized from the flood project funds. Signed on 4/17/18. Effective Date 7/1/18.
- HF 2286** Municipality Time-of-Sale Requirements. A bill for an act prohibiting cities and counties from imposing time-of-sale requirements on transactions involving real property. Signed on 3/15/2018. Effective 7/1/18.
- HF 2286** IUB Bill. A bill for an act relating to the sale or acquisition of certain utilities. Signed 3/21/18. Effective 7/1/18.
- HF 2340** Fence Viewing Controversies. Amends Iowa Fence Law to allow a Board of Trustee fence viewer to recuse themselves when conflicts of interest arise. An example of this type of conflict would be if a fence viewer knew either fence owner party to the the partition fence action. Establishes a process for replacing the fence viewer with alternate. Additionally, the law provides that the fence viewers may determine that the erection of the fence on the property boundary between the adjoining property is not feasible, and establish an alternative proposal for where to place the fence. Signed 4/4/18. Effective 7/1/18.
- HF 2343** State Agency Rule Making Limitations. A bill for an act prohibiting state agencies from implementing or enforcing any standard, requirement, or threshold unless that standard, requirement, or threshold is clearly required or clearly permitted by a state statute, rule adopted pursuant to Iowa Code 17A, federal statute or regulation, is required by a court ruling, required by a state or federal executive order or a state or federal directive that failure to adopt a rule would result in the gain or loss of specific funding. Signed and effective on 3/28/18.

- HF 2371 Municipality Honeybee Immunity.** A bill for an act exempting the state and municipalities from liability for claims involving honeybees on public property. Signed 4/17/18. Effective 7/1/18.
- HF 2379 Utility Retirement Systems.** A bill for an act relating to municipal utility retirement systems. Signed 4/10/18. Effective 7/1/18.
- HF 2382 Modification of Engineering and Land Examining Board Make up.** A bill for an act relating to the composition of the engineering and land surveying examining board. Signed 4/4/18. Effective 7/1/18.
- SF 481 Sanctuary City Regulation.** A bill for an act relating to the enforcement of immigration laws and providing penalties and remedies, including the denial of state funds to certain entities who violate the laws requirements. Allows local entities an appeal to show they are properly following all mandates in the law 90 days after funds are taken. Signed 4/10/18. Effective 7/1/18.
- SF 2081 Electronic Notice in House Assessment.** A bill for an act authorizing the use of electronic means for certain notices and information provided by local assessors and including applicability provisions. Those interested in receiving notice electronically must “opt-in” all others will continue to receive notice by current practice. Enacted in hope of streamlining processes and saving local tax-payer money. Signed 3/15/18. Effective 7/1/18.
- SF 2155 Political Subdivisions.** A bill for an act concerning public investment maturity limitations relating to the operating funds of political subdivisions. Signed 4/16/18. Effective 7/1/18.
- SF 2229 Mechanics Lien/Collateral Security** A bill for an act relating to obtaining a mechanics lien when a person takes collateral security on a contract for furnishing material or performing labor, specifically clarifying that personal assurances and guarantees of the quality of the contractor’s final product constitute “additional security” and negate their ability to place a mechanics lien on the property in the case that payment is not tendered. Fixes a law that has been in the books since 1800s. Signed on 3/28/18. Effective 7/1/18.
- SF 2255 State Auditor Request Rules.** A bill for an act relating to the auditor of state concerning legislative requests for auditor reviews, specifically dealing with requests by a member of the legislature to conduct a review concerning the receipt of state or federal funds provided to a state department. Additionally this law concerns applications by taxpayers for certain city or township audits, as well as reimbursement of certain repayments for auditor services. Signed on and effective on 3/28/18.

- SF 2271 Taxi Reform Legislation.** A bill for an act relating to motor carriers, and making penalties applicable. Signed 4/4/18. Effective 7/1/18.
- SF 2290 Board of Hospital Trustees.** Changes the requirements for the composition of the county and city hospital boards from 7 members to 5, either are acceptable. Changes procedural rules on what constitutes a quorum to vote to accommodate the possibility there will be fewer voting members. Signed 3/28/18. Effective 7/1818.
- SF 2310 ABD Technical Clean-up Bill.** A bill for an act relating to alcoholic beverage control and matters under the purview of the alcoholic beverages division of the department of commerce. Signed and Effective on 4/2/18.
- HF 2372 County Supervisor Redistricting Plan.** Deems that counties over 60,000 which selected election from single-member districts for supervisors will be covered by same districting rules that apply to counties of more than 180,000 or which have consolidated city/county government (Plan 3 single-member districts for supervisors). Requires future districting plans to be drawn by LSA after the census. Only allows changes to the representation plan by special election.
- SF 2226 Ground Water Hazard Statements.** A bill for an act relating to formatting requirements for groundwater hazard statements recorded with a county recording office. Signed 4/10/18. Effective 7/1/18
- SF 2227 County Resolution Publication.** Requires the county auditor to include a summary of resolutions, or the full text of resolutions, in the materials furnished to the board of supervisors for publication about the meetings of the supervisors. Requires the adopted resolutions to be posted on the internet if the county has an internet site.

Bills of Interest that did not or have not passed in the 2018 Session

Still Alive as of 4/26/18

- HF 2131 Hotel/Motel Taxes.** A bill for an act relating to the exemption from the hotel and motel taxes for the renting of lodging exceeding a certain number of consecutive days. **In Senate.**
- HF 2369 Local Referendum Votes.** A bill for an act setting the dates for the submission of local public measures to the electors to the second Tuesday in November. On Senate Unfinished Business Calendar.
- SF 220 Modified Ban of ATE's.** A bill for an act regulating the use of automated traffic law enforcement systems, and providing a penalty. Amendment calling for a

total ban and immediate removal of all existing systems was deferred on by the Senate on 4/17/18. The fight wages on.

- SF 2081** **Backfill Phase Out.** A bill for an act modifying appropriation amounts for payment of commercial and industrial property tax replacement claims and including effective date provisions. Phase out all state appropriations by 2020. Funnel proof.
- SF 2382** **Criminal Law Omnibus.** A bill for an act relating to criminal law and procedure including certain related administrative proceedings, providing penalties, and including effective date provisions. On House Unfinished Business Calendar.
- SF 2390** **Sanitation Code Changes Hotel/Food Inspections.** Requires hotel license inspections be done in accordance with DIA rules. Sets the penalty for a failure to renew the license at 10% per month. Requires an inspection on any complaint that a hotel is unsanitary. Makes definitional changes in relationship to food inspections for food establishments. Adds requirements on renewal times. Adds a \$200 general application fee but excludes farmer's markets and temporary food establishments. Requires a person conducting an event to submit a \$50 fee 60 days before the event. Changes the fee schedule for food trucks/pushcarts. Adds new fees, including fees for school inspections. Effective January 2019. Bouncing Bill in the House.

Dead

- SF 2338** **Iowa's Restoration of Freedom of Religion Act.** A bill for an act relating to the standard of judicial review and providing a claim or defense when a state action burdens a person's exercise of religion, and including effective date provisions. Died before Second Funnel.

