

*Holden*

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SENATE FILE 2128

By HOLDEN, TIEDEN and PRIEBE

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

# A BILL FOR

1 An Act relating to the Iowa Administrative Procedure Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter seventeen A (17A), Code 1979, is amended  
2 by adding the following new section:

3 NEW SECTION. MODEL RULES. The attorney general shall  
4 adopt rules establishing model rules of procedure appropriate  
5 for use by as many agencies as possible. The model rules  
6 shall address all general functions and duties performed in  
7 common by agencies. Each agency shall adopt by rule as much  
8 of the model rules as is practicable under its circumstances.  
9 If a rule of procedure is adopted by an agency that differs  
10 from the model rules, the agency must provide a statement  
11 to the attorney general, administrative rules review committee  
12 and administrative rules coordinator of the reasons why the  
13 provision of the model rule was impracticable under its circum-  
14 stances.

15 Sec. 2. Section seventeen A point three (17A.3), subsec-  
16 tion one (1), Code 1979, is amended by adding the following  
17 new paragraphs:

18 NEW PARAGRAPH. As soon as feasible and to the extent  
19 practicable, adopt rules to codify principles of law or policy  
20 lawfully declared by the agency as the basis for its decision  
21 in a particular case.

22 NEW PARAGRAPH. As soon as feasible and to the extent  
23 practicable, adopt rules embodying appropriate procedural  
24 safeguards in addition to those required by this chapter and  
25 embodying appropriate standards and principles which the  
26 agency applies to the law it administers.

27 Sec. 3. Section seventeen A point four (17A.4), Code 1979,  
28 is amended by adding the following new subsection:

29 NEW SUBSECTION. Upon the written request of an interested  
30 person prior to or within thirty days after the effective  
31 date of a rule, the agency shall issue a concise statement  
32 of the principal reasons for and against the rule it adopted  
33 and the reasons for overruling the considerations urged against  
34 the rule. The agency shall issue the statement within thirty  
35 days after receipt of the request or publication of the rule

1 in the Iowa administrative bulletin whichever is later. A  
 2 certified copy of the statement shall be filed with that rule  
 3 in the office of the administrative rules coordinator and  
 4 transmitted to the code editor when the statement is issued  
 5 to the requesting party. The code editor shall indicate that  
 6 a statement has been filed in the Iowa administrative bulletin  
 7 and in the Iowa administrative code adjacent to that rule.

8 Sec. 4. Section seventeen A point four (17A.4), subsection  
 9 one (1), paragraph b, Code 1979, is amended to read as follows:

10 b. Afford all interested persons not less than twenty  
 11 days to submit data, views or arguments in writing. If timely  
 12 requested in writing by twenty-five interested persons, by  
 13 a governmental subdivision, by the administrative rules review  
 14 committee, by an agency, or by an association having not less  
 15 than twenty-five members, the agency must give interested  
 16 persons an opportunity to make oral presentation. The  
 17 opportunity for oral presentation must be held at least twenty  
 18 days after publication of the notice of its time and place  
 19 in the Iowa administrative bulletin. The agency shall consider  
 20 fully all written and oral submissions respecting the proposed  
 21 rule. Within one hundred eighty days following either the  
 22 notice published according to the provisions of subsection  
 23 1, paragraph "a" or within one hundred eighty days after the  
 24 last date of the oral presentations on the proposed rule,  
 25 whichever is later, the agency shall adopt a rule pursuant  
 26 to the rule-making proceeding or shall terminate the proceeding  
 27 by publishing notice of termination in the Iowa administrative  
 28 bulletin. ~~if-requested-to-do-so-by-an-interested-person,~~  
 29 ~~either-prior-to-adoption-or-within-thirty-days-thereafter,~~  
 30 ~~the-agency-shall-issue-a-concise-statement-of-the-principal~~  
 31 ~~reasons-for-and-against-the-rule-it-adopted,-incorporating~~  
 32 ~~therein-the-reasons-for-overruling-considerations-urged-against~~  
 33 ~~the-rule.~~

34 Sec. 5. Section seventeen A point four (17A.4), subsection  
 35 four (4), paragraph a, Code 1979, is amended to read as

1 follows:

2 a. If the administrative rules review committee created  
3 by section 17A.8, the governor or the attorney general finds  
4 objection to all or some portion of a ~~proposed~~ rule because  
5 that rule is ~~deemed-to-be-unreasonable,-arbitrary,-capricious~~  
6 ~~or-otherwise-beyond-the-authority-delegated-to-the-agency~~  
7 procedurally or substantively unlawful, the committee, governor  
8 or attorney general may, in writing, notify the agency of  
9 the objection ~~prior-to-the-effective-date-of-such-a-rule~~  
10 stating the reasons for that action. ~~In-the-case-of-a-rule~~  
11 ~~issued-under-subsection-2,-or-a-rule-made-effective-under~~  
12 ~~the-terms-of-section-17A.5,-subsection-2,-paragraph-"b",-the~~  
13 ~~committee,-governor-or-attorney-general-may-notify-the-agency~~  
14 ~~of-such-an-objection-within-seventy-days-of-the-date-such~~  
15 ~~a-rule-became-effective.~~ The committee, governor or the  
16 attorney general shall also promptly file a certified copy  
17 of such an objection in the office of the ~~Code-editor-within~~  
18 ~~the-above-time-limits~~ administrative rules coordinator and  
19 a notice to the effect that an objection has been filed shall  
20 be published in the next issue of the Iowa administrative  
21 bulletin and in the Iowa administrative code when that rule  
22 is printed in it. The burden of proof shall then be on the  
23 agency in any proceeding for judicial review or for enforcement  
24 of the rule heard subsequent to the filing to establish that  
25 the rule or portion of the rule ~~timely~~ objected to according  
26 to the above procedure is ~~not-unreasonable,-arbitrary,-~~  
27 ~~capricious-or-otherwise-beyond-the-authority-delegated-to~~  
28 ~~it~~ procedurally or substantively lawful.

29 Sec. 6. Section seventeen A point four (17A.4), subsection  
30 six (6), Code 1979, is amended to read as follows:

31 6. The governor may rescind an-adopted all or a separate  
32 and severable portion of a rule by executive order ~~within~~  
33 ~~thirty-five-days-of-the-publication-of-the-rule~~ stating the  
34 reasons for the action. The governor shall provide a copy  
35 of the executive order to the Code editor who shall include

1 it in the next publication of the Iowa administrative bulletin.  
2 Sec. 7. This Act takes effect January first following  
3 its enactment.

4 EXPLANATION

5 This bill revises several provisions of the rule-making  
6 process under the Iowa Administrative Procedures Act.

7 Section 1 requires the attorney general to promulgate model  
8 rules of procedure and agencies are required to adopt as much  
9 of the model rules as is practicable in its circumstances.

10 Section 2 requires agencies to adopt rules to codify prin-  
11 ciples declared by the agency to be the basis for a decision  
12 in a case and to adopt rules of additional procedural  
13 safeguards and the standards and principles the agency applies  
14 to its statutes.

15 Sections 3 and 4 expand the time in which a statement of  
16 reasons may be requested, specify the time in which an agency  
17 must respond and set this provision out in a separate subsec-  
18 tion.

19 Section 5 provides that the objection power of the  
20 administrative rules review committee, attorney general and  
21 governor is not limited to proposed rules and may be exercised  
22 at any time.

23 Section 6 provides that the governor's power to rescind  
24 a rule is not limited to the time of adoption but extends  
25 to any rule. The governor is also allowed to rescind a  
26 separate and severable portion of a rule.

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