

FILED MAR 12 1980

SENATE FILE 2309

By COMMITTEE ON JUDICIARY

Approved 2/11 (p 234)

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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2309

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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