

House File 2389 - Enrolled

House File 2389

AN ACT

RELATING TO THE RULEMAKING PROCESS FOR EXECUTIVE BRANCH
AGENCIES AND INCLUDING TRANSITION PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 2B.13, subsection 2, Code 2020, is amended by adding the following new paragraph:

NEW PARAGRAPH. *Of.* Update the address, telephone number, facsimile number, or electronic mail address of an agency, officer, or other entity.

Sec. 2. Section 17A.4, subsections 4 and 6, Code 2020, are amended to read as follows:

4. Any ~~notice of intended action or rule filed without notice pursuant to [subsection 3](#)~~ this section or section 17A.5, which that necessitates additional annual expenditures of at least one hundred thousand dollars or combined expenditures of at least five hundred thousand dollars within five years by all affected persons, including the agency itself, shall be accompanied by a fiscal impact statement outlining the expenditures. The agency shall promptly deliver a copy of the statement to the legislative services agency. To the extent feasible, the legislative services agency shall analyze the statement and provide a summary of that analysis to the administrative rules review committee. If the agency has made a good-faith effort to comply with the requirements of this subsection, the rule shall not be invalidated on the ground that the contents of the statement are insufficient or

inaccurate.

6. *a.* If the administrative rules review committee created by [section 17A.8](#), the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule ~~issued under~~ filed without notice pursuant to subsection 3, or a rule made effective under [section 17A.5, subsection 2](#), paragraph "b", the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subsequent to the filing to establish that the rule or portion of the rule ~~timely~~ objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

b. If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph "a", the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of the department of administrative services from the support appropriations of the agency which ~~issued~~ adopted the rule in question.

Sec. 3. Section 17A.4, subsection 7, Code 2020, is amended by striking the subsection.

Sec. 4. Section 17A.5, subsection 2, paragraph b, subparagraph (2), Code 2020, is amended to read as follows:

(2) In any subsequent action contesting the effective date of a rule ~~promulgated~~ adopted under this paragraph "b", the

burden of proof shall be on the agency to justify its finding. The agency's finding and a brief statement of the reasons therefor shall be filed with and made a part of the rule. Prior to indexing and publication, the agency shall make reasonable efforts to make known to the persons who may be affected by it a rule made effective under the terms of this paragraph "b".

Sec. 5. Section 17A.6, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In lieu of the procedures established in subsection 2, an agency may establish alternative procedures providing for public access to an electronic or printed copy of a publication containing standards adopted by reference if the publication is proprietary or contains proprietary information.

Sec. 6. Section 17A.6A, subsection 2, paragraph c, Code 2020, is amended to read as follows:

c. Process forms and instructions for filing a petition for rulemaking pursuant to [section 17A.7](#), a petition for a declaratory order pursuant to [section 17A.9](#), or a petition for a waiver ~~or variance~~ of an administrative rule pursuant to section 17A.9A.

Sec. 7. Section 17A.7, subsection 1, Code 2020, is amended to read as follows:

1. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within sixty days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with [section 17A.4](#), or ~~issue~~ adopt a rule if it is not required to be ~~issued~~ filed according to the procedures of [section 17A.4, subsection 1](#). The agency shall submit the petition and the disposition of the petition to the administrative rules review committee.

Sec. 8. Section 17A.8, subsections 2, 5, and 9, Code 2020, are amended to read as follows:

2. A committee member shall be appointed ~~prior to~~ as of the ~~adjournment~~ convening of a regular session convened in an odd-numbered year. The term of office for a member of the

house of representatives shall be for four years beginning May 1 and end upon the convening of the year of appointment general assembly following the appointment. The term of office for a member of the senate shall end upon the convening of the general assembly after the general assembly following appointment. However, a member shall serve until a successor is appointed. A vacancy on the committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a committee member ceases to be a member of the house from which the member was appointed.

5. A regular committee meeting shall be held at the seat of government on the second Tuesday of each month or on an alternative date established by the committee. Unless impracticable, in advance of each such meeting the subject matter to be considered shall be published in the Iowa administrative bulletin. A special committee meeting may be called by the chairperson at any place in the state and at any time. Unless impracticable, in advance of each special meeting notice of the time and place of such meeting and the subject matter to be considered shall be published in the Iowa administrative bulletin.

9. *a.* Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule or portion of a rule until the adjournment of the next regular session of the general assembly, unless the rule was ~~promulgated~~ adopted under section 17A.5, subsection 2, paragraph "b". If the rule was ~~promulgated~~ adopted under section 17A.5, subsection 2, paragraph "b", the administrative rules review committee, within thirty-five days of the ~~effective date~~ publication of the rule in the Iowa administrative bulletin and upon the vote of two-thirds of its members, may suspend the applicability of the rule or portion of the rule until the adjournment of the next regular session of the general assembly.

b. The committee shall refer a rule or portion of a rule whose effective date has been delayed or applicability has been suspended to the speaker of the house of representatives and the president of the senate who shall refer the delayed

or suspended rule or portion of the rule to the appropriate standing committees of the general assembly. A standing committee shall review the rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to ~~disapprove~~ nullify the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not ~~disapproved~~ nullified the rule by a joint resolution, the rule shall become effective upon the adjournment of the session of the general assembly. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule or portion of a rule whose effective date has been delayed or whose applicability has been suspended pursuant to [this subsection](#). ~~If the rule is disapproved, the rule shall not be effective and the agency shall rescind the rule.~~

Sec. 9. Section 17A.8, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 10. *a.* Upon the vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule or portion of a rule seventy days beyond that permitted in section 17A.5, unless the rule was adopted under section 17A.5, subsection 2, paragraph "b". If the rule was adopted under section 17A.5, subsection 2, paragraph "b", the administrative rules review committee, within thirty-five days of the publication of the rule in the Iowa administrative bulletin and upon the vote of two-thirds of its members, may suspend the applicability of the rule or portion of the rule for seventy days.

b. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

Sec. 10. Section 17A.9A, Code 2020, is amended to read as follows:

17A.9A Waivers and variances.

1. Any person may petition an agency for a waiver ~~or variance~~ from the requirements of a rule, pursuant to the requirements of [this section](#), if the agency has established by rule an application, evaluation, and issuance procedure permitting waivers ~~and variances~~. An agency shall not grant a petition for waiver ~~or a variance~~ of a rule unless the agency has jurisdiction over the rule and the waiver ~~or variance~~ is consistent with any applicable statute, constitutional provision, or other provision of law. In addition, this section does not authorize an agency to waive ~~or vary~~ any requirement created or duty imposed by statute.

2. Upon petition of a person, an agency may in its sole discretion issue a waiver ~~or variance~~ from the requirements of a rule if the agency finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested.

b. The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

c. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law.

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

3. The burden of persuasion rests with the person who petitions an agency for the waiver ~~or variance~~ of a rule. Each petition for a waiver ~~or variance~~ shall be evaluated by the agency based on the unique, individual circumstances set out in the petition. A waiver ~~or variance~~, if granted, shall be drafted by the agency so as to provide the narrowest exception possible to the provisions of the rule. The agency may place any condition on a waiver ~~or a variance~~ that the agency finds desirable to protect the public health, safety, and welfare. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~

would be impracticable. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver ~~or variance~~ may be renewed if the agency finds all of the factors set out in [subsection 2](#) remain valid.

4. A grant or denial of a waiver ~~or variance~~ petition shall be indexed, filed, and available for public inspection as provided in [section 17A.3](#). The administrative code editor and the administrative rules coordinator shall devise ~~a mechanism~~ an internet site to identify rules for which a petition for a waiver ~~or variance~~ has been granted or denied and make this information available to the public.

~~5. Semiannually, each agency which permits the granting of petitions for waivers or variances~~ When an agency grants a waiver, the agency shall submit the information required by this subsection on the internet site within sixty days. ~~The internet site shall prepare a report of these actions identifying~~ identify the rules for which a waiver ~~or variance~~ has been granted or denied, the number of times a waiver ~~or variance~~ was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the agencies' actions on the waiver ~~or variance~~ request. To the extent practicable, ~~this report~~ the agency shall detail include information detailing the extent to which the granting of a waiver ~~or variance~~ has established a precedent for additional waivers ~~or variances~~ and the extent to which the granting of a waiver ~~or variance~~ has affected the general applicability of the rule itself. ~~Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

~~6.~~ 5. For purposes of [this section](#), *"a waiver ~~or variance~~"* means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

Sec. 11. Section 17A.22, Code 2020, is amended to read as follows:

17A.22 Agency authority to implement chapter.

Agencies shall have all the authority necessary to comply with the requirements of [this chapter](#) through the issuance adoption of rules or otherwise.

Sec. 12. TRANSITION PROVISIONS — MEMBERSHIP OF ADMINISTRATIVE RULES REVIEW COMMITTEE. Notwithstanding section 17A.8, subsection 2, as amended by this Act, the terms of members of the administrative rules review committee as of the effective date of this Act shall continue until the convening of the 2021 regular session of the general assembly.

PAT GRASSLEY
Speaker of the House

CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2389, Eighty-eighth General Assembly.

MEGHAN NELSON
Chief Clerk of the House

Approved _____, 2020

KIM REYNOLDS
Governor