

4/10/95 Referred to Local Gov.

MAR 20 1995
Place On Calendar

HOUSE FILE 495
BY COMMITTEE ON LOCAL GOVERNMENT

(SUCCESSOR TO HSB 282)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the waiver of certain state agency actions
2 affecting city and county government.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 495

1 Section 1. Section 17A.4, Code 1995, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 7. An adopted rule or other agency action
4 may be waived for a city or county in accordance with the
5 waiver provisions of section 17A.34.

6 Sec. 2. NEW SECTION. 17A.34 WAIVER OF AGENCY ACTION.

7 1. WAIVER. A city council or county board of supervisors
8 may request that an agency waive the application of agency
9 action to that city or county when all of the following
10 requirements apply:

11 a. The agency action is not specifically required by state
12 statute or federal statute or regulation, including an order
13 of a court.

14 b. The agency action relates to the operation of, or
15 services provided by, the city or the county.

16 c. The city or county has developed a plan to improve the
17 operation of, or services provided by, the city or county, and
18 that plan indicates that a waiver of the agency action is
19 necessary to accomplish those improvements in a more effective
20 or efficient manner.

21 d. The waiver of the agency action would not pose a threat
22 to the health, safety, or welfare of citizens who may be
23 affected by the waiver, and would not result in the reduction
24 or denial of any essential service provided by the city or
25 county.

26 e. The waiver of the agency action would not result in the
27 loss of any federal funding to the state or a political
28 subdivision.

29 2. APPLICATION FOR WAIVER. A city council or county board
30 of supervisors may apply for a waiver by filing an application
31 with the administrative head of the agency having jurisdiction
32 over the agency action. The application shall include all of
33 the following information:

34 a. Identification of the government operation, service, or
35 program affected by the agency action.

1 b. Identification of the agency action for which the
2 waiver is sought.

3 c. Identification of any applicable state statute or rule
4 or federal statute or regulation or judicial determination
5 involving the agency action.

6 d. Identification of any person who might be affected by
7 the waiver.

8 e. A description of the improved operation or service
9 outcome sought, including an explanation of the effect a
10 waiver would have in accomplishing that outcome, a statement
11 specifying the desired outcomes the waiver is intended to
12 accomplish, and the means of measurement the city or county
13 government will use to determine whether those outcomes are
14 achieved.

15 f. A procedure for reporting the results achieved from the
16 waiver to the agency.

17 3. REVIEW BY AGENCY AND ISSUANCE OF WAIVER.

18 a. Upon receipt of an application for a waiver the agency
19 shall commence a review to determine whether the requested
20 waiver meets the requirements in subsection 1. An incomplete
21 application shall be returned to the city or county by the
22 agency, along with an explanation identifying those areas of
23 the application which do not comply with waiver application
24 requirements. The agency may request supplemental information
25 from the applicant and may schedule informal meetings with the
26 applicant or any other person as needed.

27 b. Within sixty days of the receipt of the application the
28 agency shall issue a written statement containing a
29 determination of whether the waiver application meets the
30 requirements in subsection 1 and the rationale in support of
31 that determination. If the agency finds that the application
32 meets the requirements in subsection 1, the waiver shall be
33 granted, subject to any additional requirements deemed
34 necessary by the agency. Additional requirements may include
35 but are not limited to provisions the agency deems necessary

1 to protect the public health, safety, and welfare, and
2 provisions for the agency to review and monitor the
3 functioning and outcomes of the waiver. The minimum period of
4 duration for a waiver is one year. The terms of the waiver
5 shall specify the period of duration for the waiver and any
6 provisions for renewal.

7 4. REVOCATION OF WAIVER. At any time during the period of
8 duration of a waiver, the agency may notify the city or county
9 in writing that specified requirements of the waiver are not
10 being met or that specified outcomes are not being achieved.
11 The city or county then has ninety days to comply with the
12 notice provisions. If the city or county does not comply with
13 the notice provisions within the ninety-day period, the agency
14 may then revoke the waiver, after providing the city or county
15 with the opportunity for an evidentiary hearing in accordance
16 with the contested case provisions of this chapter.

17 5. WAIVER REVIEW BOARD. A waiver review board is created
18 in the department of management. The board shall consist of
19 three members. One member shall be the governor's
20 administrative rules coordinator or the coordinator's
21 designee. The other two members shall be appointed by the
22 governor, with one having prior experience as a local
23 government elected or appointed official and the other having
24 prior experience as a state government elected or appointed
25 official. Terms of members appointed by the governor shall be
26 three years. The board shall select a chairperson and specify
27 rules of procedure. Meetings shall be held at the call of the
28 chairperson or upon motion of two members. Members are
29 eligible for reimbursement of actual and necessary expenses.
30 The department of management shall provide clerical and staff
31 support to the board.

32 6. REQUESTS FOR REVIEW. An applicant whose request for
33 waiver is denied, whose request for a waiver renewal is
34 denied, or whose waiver application is made subject to
35 additional requirements the applicant considers unlawful or

1 unreasonable may seek review of that decision by the waiver
2 review board. This review is not a contested case proceeding.
3 A request for review must be submitted to the board within
4 twenty days of the agency action and must contain the
5 following information:

6 a. A clear and concise statement of the agency action
7 concerning the waiver application.

8 b. A statement detailing why the agency action is
9 considered to be unlawful or unreasonable, relating any
10 relevant facts on the matter and citing any applicable law.

11 c. A copy of the waiver application.

12 d. A copy of the statement issued by the agency, including
13 any additional requirement applied to the waiver by the
14 agency.

15 7. BOARD CONSIDERATION. The board may meet informally
16 with any person and request any additional information deemed
17 necessary to perform the review. The board shall complete its
18 review within ninety days of receiving a request for review.
19 If the board declines to perform a review, the board shall
20 notify the applicant and the agency, in writing, within the
21 ninety-day review period.

22 8. BOARD REQUEST. If the board finds that the agency
23 action was unlawful or unreasonable, the board may request
24 that the agency issue a waiver or modify the additional
25 requirements applied to the waiver. The board's request shall
26 be issued in writing to the applicant and the agency. If the
27 agency declines to take the action requested by the board, the
28 agency shall notify the applicant and the board of its
29 decision in writing. The board shall issue a written summary
30 of the review, including any comments or recommendations
31 deemed appropriate by the board. The board shall submit the
32 written summary to the applicant and the agency and to the
33 governor and the administrative rules review committee for
34 further review. The applicant may seek judicial review of the
35 agency action within twenty calendar days following the date

1 the waiver board either declined to perform a review or issued
2 its written summary. The waiver board's decision not to
3 perform a review is itself not subject to judicial review.

4 EXPLANATION

5 This bill relates to the waiver of state agency
6 administrative rules and actions affecting city and county
7 governments.

8 Section 17A.4 is amended to indicate that an adopted rule
9 or other agency action may be waived for a city or county in
10 accordance with the provisions outlined in the bill.

11 New section 17A.34 is incorporated into the Iowa
12 administrative procedure Act. The new section outlines a
13 procedure for a city council or county board of supervisors to
14 apply to a state agency for a waiver of an agency action.
15 Chapter 17A defines an agency action to include agency rules
16 or other policy statement, order, decision, license,
17 proceeding, investigation, sanction, relief, the exercise or
18 failure to exercise an agency discretionary power, and the
19 exercise or failure to exercise an agency duty.

20 General requirements for a waiver of agency action are
21 provided. In addition, an agency may apply additional
22 requirements in granting a waiver. An agency may revoke an
23 approved waiver if requirements are not met which is made
24 subject to contested case proceedings. A city or county may
25 appeal other agency waiver decisions or requirements which are
26 believed to be unlawful or unreasonable to the waiver review
27 board created by the bill. A review is subject to time limit
28 requirements. The board may request an agency to issue a
29 waiver or to modify the additional requirements applied to a
30 waiver by the agency. If the agency declines to take the
31 requested action, the waiver board is to issue a written
32 summary which is to be provided to the applicant, agency,
33 governor, and administrative rules review committee. If the
34 waiver review board decides not to review the agency action
35 involving a waiver or the agency declines to take the action

1 requested by the waiver board, the city or county may seek
2 judicial review of the agency action.

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H-3773

1 Amend House File 495 as follows:

2 1. Page 3, line 35, through page 4, line 1, by
3 striking the words "or unreasonable".

4 2. Page 4, line 18, by inserting after the words
5 "for review" the following: "and notify the applicant
6 and the agency of the board's decision, findings, or
7 recommendations in accordance with subsection 8".

8 3. Page 4, by striking lines 19 through 21 and
9 inserting the following: "Failure of the board to act
10 on a request for review within ninety days of
11 receiving the request shall constitute a decision of
12 the board to decline to take action on the request."

13 4. Page 4, line 22, by striking the word
14 "REQUEST" and inserting the following:
15 "RECOMMENDATION".

16 5. Page 4, line 23, by striking the words "or
17 unreasonable" and inserting the following: "in
18 accordance with the criteria specified in section
19 17A.19, subsection 8,".

20 6. Page 4, line 23, by striking the word
21 "request" and inserting the following: "recommend".

22 7. By striking page 4, line 25, through page 5,
23 line 3, and inserting the following: "requirements
24 applied to a waiver that was granted. The board's
25 recommendation shall be issued in writing to the
26 applicant and the agency. The agency shall consider
27 the board's recommendation and within thirty days of
28 the recommendation's issuance shall either accept the
29 recommendation and take the action recommended by the
30 board or reject the recommendation. If the agency
31 rejects the recommendation, the agency shall notify
32 the applicant and the board of its decision in
33 writing, detailing its reasons for rejecting the
34 recommendation. Upon receiving a rejection of a
35 recommendation, the board shall prepare a summary of
36 the review process which shall include the agency
37 rejection and any other comments or information the
38 board deems desirable. The board shall forward this
39 summary to the governor and the administrative rules
40 review committee for additional study.

41 9. JUDICIAL REVIEW. An applicant may seek
42 judicial review of an agency's decision to refuse to
43 grant a waiver or concerning an agency's decision
44 concerning any additional requirements applied to a
45 waiver which is granted. The petition for review must
46 be filed within thirty days of the date of a decision
47 by the waiver review board."

By HOUSER of Pottawattamie

H-3773 FILED APRIL 5, 1995

Houser, chr

Hlemme

Mertz

HSB 282

LOCAL GOVERNMENT

SENATE/HOUSE FILE 495
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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22 to the health, safety, or welfare of citizens who may be
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24 or denial of any essential service provided by the city or
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