

House Study Bill 282

Conference Committee Text

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1 1 Section 1. Section [17A.4](#), Code 1995, is amended by adding
1 2 the following new subsection:

1 3 NEW SUBSECTION. 7. An adopted rule or other agency action
1 4 may be waived for a city or county in accordance with the
1 5 waiver provisions of section 17A.34.

1 6 Sec. 2. NEW SECTION. 17A.34 WAIVER OF AGENCY ACTION.

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

1 11 a. The agency action is not specifically required by state
1 12 statute or federal statute or regulation, including an order
1 13 of a court.

1 14 b. The agency action relates to the operation of, or
1 15 services provided by, the city or the county.

1 16 c. The city or county has developed a plan to improve the
1 17 operation of, or services provided by, the city or county, and
1 18 that plan indicates that a waiver of the agency action is
1 19 necessary to accomplish those improvements in a more effective
1 20 or efficient manner.

1 21 d. The waiver of the agency action would not pose a threat
1 22 to the health, safety, or welfare of citizens who may be
1 23 affected by the waiver, and would not result in the reduction
1 24 or denial of any essential service provided by the city or
1 25 county.

1 26 e. The waiver of the agency action would not result in the
1 27 loss of any federal funding to the state or a political
1 28 subdivision.

1 29 2. APPLICATION FOR WAIVER. A city council or county board
1 30 of supervisors may apply for a waiver by filing an application
1 31 with the administrative head of the agency having jurisdiction
1 32 over the agency action. The application shall include all of
1 33 the following information:

1 34 a. Identification of the government operation, service, or
1 35 program affected by the agency action.

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

2 3 c. Identification of any applicable state statute or rule
2 4 or federal statute or regulation or judicial determination
2 5 involving the agency action.

2 6 d. Identification of any person who might be affected by
2 7 the waiver.

2 8 e. A description of the improved operation or service
2 9 outcome sought, including an explanation of the effect a
2 10 waiver would have in accomplishing that outcome, a statement
2 11 specifying the desired outcomes the waiver is intended to
2 12 accomplish, and the means of measurement the city or county
2 13 government will use to determine whether those outcomes are
2 14 achieved.

2 15 f. A procedure for reporting the results achieved from the
2 16 waiver to the agency.

2 17 3. REVIEW BY AGENCY AND ISSUANCE OF WAIVER.

2 18 a. Upon receipt of an application for a waiver the agency
2 19 shall commence a review to determine whether the requested
2 20 waiver meets the requirements in subsection 1. An incomplete
2 21 application shall be returned to the city or county by the

2 22 agency, along with an explanation identifying those areas of
2 23 the application which do not comply with waiver application
2 24 requirements. The agency may request supplemental information
2 25 from the applicant and may schedule informal meetings with the
2 26 applicant or any other person as needed.

2 27 b. Within sixty days of the receipt of the application the
2 28 agency shall issue a written statement containing a
2 29 determination of whether the waiver application meets the
2 30 requirements in subsection 1 and the rationale in support of
2 31 that determination. If the agency finds that the application
2 32 meets the requirements in subsection 1, the waiver shall be
2 33 granted, subject to any additional requirements deemed
2 34 necessary by the agency. Additional requirements may include
2 35 but are not limited to provisions the agency deems necessary
3 1 to protect the public health, safety, and welfare, and
3 2 provisions for the agency to review and monitor the
3 3 functioning and outcomes of the waiver. The minimum period of
3 4 duration for a waiver is one year. The terms of the waiver
3 5 shall specify the period of duration for the waiver and any
3 6 provisions for renewal.

3 7 4. REVOCATION OF WAIVER. At any time during the period of
3 8 duration of a waiver, the agency may notify the city or county
3 9 in writing that specified requirements of the waiver are not
3 10 being met or that specified outcomes are not being achieved.
3 11 The city or county then has ninety days to comply with the
3 12 notice provisions. If the city or county does not comply with
3 13 the notice provisions within the ninety-day period, the agency
3 14 may then revoke the waiver, after providing the city or county
3 15 with the opportunity for an evidentiary hearing in accordance
3 16 with the contested case provisions of this chapter.

3 17 5. WAIVER REVIEW BOARD. A waiver review board is created
3 18 in the department of management. The board shall consist of
3 19 three members. One member shall be the governor's
3 20 administrative rules coordinator or the coordinator's
3 21 designee. The other two members shall be appointed by the
3 22 governor, with one having prior experience as a local
3 23 government elected or appointed official and the other having
3 24 prior experiences as a state government elected or appointed
3 25 official. Terms of members appointed by the governor shall be
3 26 three years. The board shall select a chairperson and specify
3 27 rules of procedure. Meetings shall be held at the call of the
3 28 chairperson or upon motion of two members. Members are
3 29 eligible for reimbursement of actual and necessary expenses.
3 30 The department of management shall provide clerical and staff
3 31 support to the board.

3 32 6. REQUESTS FOR REVIEW. An applicant whose request for
3 33 waiver is denied, whose request for a waiver renewal is
3 34 denied, or whose waiver application is made subject to
3 35 additional requirements the applicant considers unlawful or
4 1 unreasonable may seek review of that decision by the waiver
4 2 review board. This review is not a contested case proceeding.
4 3 A request for review must be submitted to the board within
4 4 twenty days of the agency action and must contain the
4 5 following information:

4 6 a. A clear and concise statement of the agency action
4 7 concerning the waiver application.

4 8 b. A statement detailing why the agency action is
4 9 considered to be unlawful or unreasonable, relating any
4 10 relevant facts on the matter and citing any applicable law.

4 11 c. A copy of the waiver application.

4 12 d. A copy of the statement issued by the agency, including
4 13 any additional requirement applied to the waiver by the
4 14 agency.

4 15 7. BOARD CONSIDERATION. The board may meet informally
4 16 with any person and request any additional information deemed
4 17 necessary to perform the review. The board shall complete its
4 18 review within ninety days of receiving a request for review.

4 19 If the board declines to perform a review, the board shall
4 20 notify the applicant and the agency, in writing, within the
4 21 ninety-day review period.

4 22 8. BOARD REQUEST. If the board finds that the agency
4 23 action was unlawful or unreasonable, the board may request
4 24 that the agency issue a waiver or modify the additional
4 25 requirements applied to the waiver. The board's request shall
4 26 be issued in writing to the applicant and the agency. If the
4 27 agency declines to take the action requested by the board, the
4 28 agency shall notify the applicant and the board of its
4 29 decision in writing. The board shall issue a written summary
4 30 of the review, including any comments or recommendations
4 31 deemed appropriate by the board. The board shall submit the
4 32 written summary to the applicant and the agency and to the
4 33 governor and the administrative rules review committee for
4 34 further review. The applicant may seek judicial review of the
4 35 agency action within twenty calendar days following the date
5 1 the waiver board either declined to perform a review or issued
5 2 its written summary. The waiver board's decision not to
5 3 perform a review is itself not subject to judicial review.

5 4 EXPLANATION

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

5 8 Section 17A.4 is amended to indicate that an adopted rule
5 9 or other agency action may be waived for a city or county in
5 10 accordance with the provisions outlined in the bill.

5 11 New section 17A.34 is incorporated into the Iowa
5 12 administrative procedure Act. The new section outlines a
5 13 procedure for a city council or county board of supervisors to
5 14 apply to a state agency for a waiver of an agency action.
5 15 Chapter 17A defines an agency action to include agency rules
5 16 or other policy statement, order, decision, license,
5 17 proceeding, investigation, sanction, relief, the exercise or
5 18 failure to exercise an agency discretionary power, and the
5 19 exercise or failure to exercise an agency duty.

5 20 General requirements for a waiver of agency action are
5 21 provided. In addition, an agency may apply additional
5 22 requirements in granting a waiver. An agency may revoke an
5 23 approved waiver if requirements are not met which is made
5 24 subject to contested case proceedings. A city or county may
5 25 appeal other agency waiver decisions or requirements which are
5 26 believed to be unlawful or unreasonable to the waiver review
5 27 board created by the bill. A review is subject to time limit
5 28 requirements. The board may request an agency to issue a
5 29 waiver or to modify the additional requirements applied to a
5 30 waiver by the agency. If the agency declines to take the
5 31 requested action, the waiver board is to issue a written
5 32 summary which is to be provided to the applicant, agency,
5 33 governor, and administrative rules review committee. If the
5 34 waiver review board decides not to review the agency action
5 35 involving a waiver or the agency declines to take the action
6 1 requested by the waiver board, the city or county may seek
6 2 judicial review of the agency action.

6 3 LSB 1286XL 76

6 4 jp/jj/8.1