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JUDICIARY

SENATE FILE 2306

BY KING

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

A BILL FOR

1 An Act concerning the administrative procedure Act relating to
 2 administrative law judges, the burden of proof in contested
 3 case hearings, the ability to seek judicial review of agency
 4 action, and the conduct of judicial review of agency action.
 5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2306

1 Section 1. Section 10A.202, Code 1997, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 10A.202 RESPONSIBILITIES.

5 1. The administrator shall have the duty to assign an
6 administrative law judge to conduct a contested case hearing
7 and issue a final decision on all contested case hearings
8 pursuant to section 17A.11, except as provided by this
9 section.

10 2. The administrator shall not have the duty to assign an
11 administrative law judge for a contested case hearing for any
12 of the following:

13 a. Contested case hearings of the department of
14 corrections pursuant to chapter 903A.

15 b. Contested case hearings of the board of parole pursuant
16 to chapter 904A.

17 c. Contested case hearings of the industrial commissioner
18 of the department of workforce development under chapter 86.

19 d. Contested case hearings of the public employment
20 relations board under chapter 20.

21 e. Contested case hearings of the employment appeal board
22 under section 10A.601.

23 f. Contested case hearings of the utilities division of
24 the department of commerce under chapter 474.

25 g. Contested case hearings of professional and
26 occupational discipline matters under chapters 147, 542B,
27 542C, 543B, 544A, and 544B.

28 h. Contested case hearings of the state racing and gaming
29 commission under chapter 99D.

30 Sec. 2. Section 17A.11, Code 1997, is amended by striking
31 the section and inserting in lieu thereof the following:

32 17A.11 ADMINISTRATIVE LAW JUDGES.

33 1. The presiding officer in evidentiary hearings required
34 to be conducted by an agency according to the provisions of
35 this chapter governing contested cases shall, except as

1 otherwise provided by section 10A.202 or 17A.15, be an
2 administrative law judge appointed by the department of
3 inspections and appeals. The department of inspections and
4 appeals shall assign administrative law judges to cases in
5 rotation unless it is not feasible. Administrative law judges
6 shall not perform duties inconsistent with their duties and
7 responsibilities as administrative law judges.

8 2. Administrative law judges are covered by the merit
9 system of personnel administration in chapter 19A. The
10 department of personnel or other appropriate agency specified
11 in section 19A.3 shall, insofar as practicable, provide for
12 different classes of administrative law judges with different
13 salary scales.

14 Sec. 3. Section 17A.12, Code 1997, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 10. Unless otherwise provided by statute,
17 the burden of proof in a contested case proceeding shall be by
18 clear and convincing evidence.

19 Sec. 4. Section 17A.15, Code 1997, is amended by striking
20 the section and inserting in lieu thereof the following:

21 17A.15 FINAL DECISIONS.

22 1. In a contested case, the administrative law judge
23 assigned by the department of inspections and appeals shall
24 make a final decision, except as provided by this section.

25 2. An administrative law judge shall not be required to
26 make a final decision concerning any of the following:

27 a. Final decisions of the department of corrections
28 pursuant to chapter 903A.

29 b. Final decisions of the board of parole pursuant to
30 chapter 904A.

31 c. Final decisions of the industrial commissioner of the
32 department of workforce development under chapter 86.

33 d. Final decisions of the public employment relations
34 board under chapter 20.

35 e. Final decisions of the employment appeal board under

1 section 10A.601.

2 f. Final decisions of the utilities division of the
3 department of commerce under chapter 474.

4 g. Final decisions of professional and occupational
5 discipline matters under chapters 147, 542B, 542C, 543B, 544A,
6 and 544B.

7 h. Final decisions of the state racing and gaming
8 commission under chapter 99D.

9 Sec. 5. Section 17A.19, subsection 1, Code 1997, is
10 amended to read as follows:

11 1. A person or party who has exhausted all adequate
12 administrative remedies and who is aggrieved or adversely
13 affected by any final agency action is entitled to judicial
14 review thereof of the agency action under this chapter. In
15 addition, a person or party who is aggrieved or adversely
16 affected by a decision of an administrative law judge is
17 entitled to immediate judicial review of the decision under
18 this chapter. When agency action is pursuant to rate
19 regulatory powers over public utilities or common carriers and
20 the aggrievement or adverse effect is to the rates or charges
21 of a public utility or common carrier, the agency action shall
22 not be final until all agency remedies have been exhausted and
23 a decision prescribing rates which satisfy the requirements of
24 those provisions of the Code has been rendered. A
25 preliminary, procedural or intermediate agency action is
26 immediately reviewable if all adequate administrative remedies
27 have been exhausted and review of the final agency action
28 would not provide an adequate remedy. If a declaratory ruling
29 has not been rendered within thirty days after the filing of a
30 petition therefor under section 17A.9, or if the agency
31 declines to issue such a declaratory ruling after receipt of a
32 petition therefor, any administrative remedy available under
33 section 17A.9 shall be deemed inadequate or exhausted.

34 Sec. 6. Section 17A.19, subsections 7 and 8, Code 1997,
35 are amended to read as follows:

1 7. In proceedings for judicial review of agency action a
2 court may shall hear and consider such evidence as it deems
3 appropriate. ~~In proceedings for judicial review of agency~~
4 ~~action in a contested case, however, a court shall not itself~~
5 ~~hear any further evidence with respect to those issues of fact~~
6 ~~whose determination was entrusted by Constitution or statute~~
7 ~~to the agency in that contested case proceeding.~~ Before the
8 date set for hearing a petition for judicial review of agency
9 action in a contested case, application may be made to the
10 court for leave to present evidence in addition to that found
11 in the record of the case. If it is shown to the satisfaction
12 of the court that the additional evidence is material ~~and that~~
13 ~~there were good reasons for failure to present it in the~~
14 ~~contested case proceeding before the agency~~ to a resolution of
15 the issues, the court may shall order that the additional
16 evidence be ~~taken before the agency upon conditions determined~~
17 by allowed to be presented before the court subject to the
18 rules of evidence. ~~The agency may modify its findings and~~
19 ~~decision in the case by reason of the additional evidence and~~
20 ~~shall file that evidence and any modifications, new findings,~~
21 ~~or decisions with the reviewing court and mail copies of the~~
22 ~~new findings or decisions to all parties.~~

23 8. The court may affirm the agency action or remand to the
24 agency for further proceedings based on a de novo review of
25 the evidence presented to the agency and any additional
26 evidence presented to the court as provided in subsection 7.

27 The court shall reverse, modify, or grant any other
28 appropriate relief from the agency action, equitable or legal
29 and including declaratory relief, if substantial rights of the
30 petitioner have been prejudiced because the agency action is:

- 31 a. In violation of constitutional or statutory provisions;
- 32 b. In excess of the statutory authority of the agency;
- 33 c. In violation of an agency rule;
- 34 d. Made upon unlawful procedure;
- 35 e. Affected by other error of law;

1 f. In a contested case, unsupported by ~~substantial~~ the
2 evidence in the record made before the agency ~~when-that-record~~
3 ~~is-viewed-as-a-whole~~ and to the court; or

4 g. Unreasonable, arbitrary or capricious or characterized
5 by an abuse of discretion or a clearly unwarranted exercise of
6 discretion.

7 EXPLANATION

8 The bill requires that the administrator of the department
9 of inspections and appeals assign an administrative law judge
10 for the purpose of conducting a contested case hearing and
11 rendering a final decision. The bill provides exceptions to
12 this requirement concerning administrative law judges for the
13 department of corrections pursuant to Code chapter 903A, the
14 board of parole pursuant to Code chapter 904A, the industrial
15 commissioner of the department of workforce development under
16 Code chapter 86, the public employment relations board under
17 Code chapter 20, the employment appeal board under Code
18 section 10A.601, the utilities division of the department of
19 commerce under Code chapter 474, professional and occupational
20 discipline matters under Code chapters 147, 542B, 542C, 543B,
21 544A, and 544B, and the state racing and gaming commission
22 under Code chapter 99D.

23 This bill provides that the burden of proof in contested
24 case proceedings pursuant to the administrative procedure Act
25 is, unless otherwise provided by statute, by clear and
26 convincing evidence.

27 The bill also provides for the ability to seek judicial
28 review of a decision rendered by an administrative law judge
29 without requiring the exhaustion of any additional
30 administrative remedies.

31 The bill also provides that the district court in reviewing
32 agency action shall permit the introduction of evidence that
33 is material to the resolution of the issues on appeal to the
34 district court. In addition, the district court shall render
35 its decision based on a de novo review of the evidence

1 presented to the agency and of the evidence presented to the
2 district court.

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