

FEB 9 2000

STATE GOVERNMENT

REPRINTED

H- 2/16/00 Amend/Do Pass w/H. 8041
S- 3/15/00 State Gov.
S- 3/23/00 Unfinished Business Calendar

HOUSE FILE 2206
BY ADMINISTRATIVE RULES
REVIEW COMMITTEE

(COMPANION TO LSB 6619SV BY
ADMINISTRATIVE RULES REVIEW
COMMITTEE)

Passed ^(p.746) House, Date 3-14-00 Passed ^(p.1263) Senate, Date 4-19-00
Vote: Ayes 98 Nays 0 Vote: Ayes 49 Nays 0
Approved 5/9/00

A BILL FOR

- 1 An Act providing for the waiver or variance of administrative
- 2 rules by state agencies.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 4

HOUSE FILE 2206

H-8041

- 1 Amend House File 2206 as follows:
- 2 1. Page 1, line 7, by striking the words "a
- 3 statute".
- 4 2. Page 1, by striking lines 8 through 10 and
- 5 inserting the following: "the agency has jurisdiction
- 6 over the rule and the waiver or variance is consistent
- 7 with any applicable statute, constitutional provision,
- 8 or other provision".
- 9 3. Page 1, line 18, by striking the words "to the
- 10 petitioner".

By COMMITTEE ON STATE GOVERNMENT
MARTIN of Scott, Chairperson

H-8041 FILED FEBRUARY 16, 2000

Adapted
3-14-00 (p.746)

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HF 2206

1 Section 1. NEW SECTION. 17A.9A WAIVERS AND VARIANCES.

2 1. Any person may petition an agency for a waiver or
3 variance from the requirements of a rule, pursuant to the
4 requirements of this section, if the agency has established by
5 rule, an application, evaluation, and issuance procedure
6 permitting waivers and variances. An agency shall not grant a
7 petition for waiver or a variance of a rule unless a statute
8 or other provision of law has delegated authority to the
9 agency sufficient to justify that action and the waiver or
10 variance is consistent with the statute or other provision of
11 law. In addition, this section does not authorize an agency
12 to waive or vary any requirement created or duty imposed by
13 statute.

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

18 a. The application of the rule to the petitioner would
19 pose an undue hardship on the person for whom the waiver or
20 variance is requested.

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

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

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

31 3. The burden of persuasion rests with the person who
32 petitions an agency for the waiver or variance of a rule.
33 Each petition for a waiver or variance shall be evaluated by
34 the agency based on the unique, individual circumstances set
35 out in the petition. A waiver or variance, if granted, shall

1 be drafted by the agency so as to provide the narrowest
2 exception possible to the provisions of the rule. The agency
3 may place any condition on a waiver or a variance that the
4 agency finds desirable to protect the public health, safety,
5 and welfare. A waiver or variance shall not be permanent,
6 unless the petitioner can show that a temporary waiver or
7 variance would be impracticable. If a temporary waiver or
8 variance is granted, there is no automatic right to renewal.
9 At the sole discretion of the agency, a waiver or variance may
10 be renewed if the agency finds all of the factors set out in
11 subsection 2 remain valid.

12 4. A grant or denial of a waiver or variance petition
13 shall be indexed, filed, and available for public inspection
14 as provided in section 17A.3. The administrative code editor
15 and the administrative rules coordinator shall devise a
16 mechanism to identify rules for which a petition for a waiver
17 or variance has been granted or denied and make this
18 information available to the public.

19 5. Semiannually, each agency which permits the granting of
20 petitions for waivers or variances shall prepare a report of
21 these actions identifying the rules for which a waiver or
22 variance has been granted or denied, the number of times a
23 waiver or variance was granted or denied for each rule, a
24 citation to the statutory provisions implemented by these
25 rules, and a general summary of the reasons justifying the
26 agencies' actions on the waiver or variance request. To the
27 extent practicable, this report shall detail the extent to
28 which the granting of a waiver or variance has established a
29 precedent for additional waivers or variances and the extent
30 to which the granting of a waiver or variance has affected the
31 general applicability of the rule itself. Copies of this
32 report shall be provided semiannually to the administrative
33 rules coordinator and the administrative rules review
34 committee.

35 6. For purposes of this section, "a waiver or variance"

1 means an agency action which suspends in whole or in part the
2 requirements or provisions of a rule as applied to an
3 identified person on the basis of the particular circumstances
4 of that person.

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EXPLANATION

6 This bill permits an agency, upon petition of a person, to
7 grant a waiver or variance from a rule of that agency at the
8 discretion of the agency. The bill provides that a petition
9 for a waiver or variance shall be granted only if the agency
10 establishes a procedure permitting the issuance of waivers or
11 variances and the law otherwise permits the granting of a
12 petition for waiver or variance. The bill provides that the
13 burden of persuasion is on the person seeking a waiver or
14 variance and provides that a petition for waiver or variance
15 can be granted only if the agency finds, by clear and
16 convincing evidence, that the rule would constitute an undue
17 hardship, that the waiver would not prejudice others, that the
18 specific rule provision is not mandated by statute, and that
19 substantially equal protection of health and safety can be
20 afforded by means other than the rule. The bill provides that
21 waivers or variances should be narrowly drawn and should, if
22 possible, be temporary in nature. The bill also requires that
23 the administrative code editor and administrative rules
24 coordinator establish a means to identify rules for which a
25 petition for a waiver or variance has been granted or denied.
26 In addition, each agency shall, on a semiannual basis, prepare
27 a report concerning its actions on waivers and variances.

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HOUSE FILE 2206
BY ADMINISTRATIVE RULES
REVIEW COMMITTEE

(COMPANION TO LSB 6619SV BY
ADMINISTRATIVE RULES REVIEW
COMMITTEE)

(As Amended and Passed by the House, March 14, 2000)

Passed House, Date _____ Passed Senate, ^(p. 1263) Date 4/19/00
Vote: Ayes _____ Nays _____ Vote: Ayes 49 Nays 0
Approved 5/9/00

A BILL FOR

1 An Act providing for the waiver or variance of administrative
2 rules by state agencies.

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

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House Amendments _____

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Deleted Language *

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HF 2206

1 Section 1. NEW SECTION. 17A.9A WAIVERS AND VARIANCES.

2 1. Any person may petition an agency for a waiver or
3 variance from the requirements of a rule, pursuant to the
4 requirements of this section, if the agency has established by
5 rule, an application, evaluation, and issuance procedure
6 permitting waivers and variances. An agency shall not grant a
* 7 petition for waiver or a variance of a rule unless the agency
8 has jurisdiction over the rule and the waiver or variance is
9 consistent with any applicable statute, constitutional
10 provision, or other provision of law. In addition, this
11 section does not authorize an agency to waive or vary any
12 requirement created or duty imposed by statute.

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

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

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

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

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

30 3. The burden of persuasion rests with the person who
31 petitions an agency for the waiver or variance of a rule.
32 Each petition for a waiver or variance shall be evaluated by
33 the agency based on the unique, individual circumstances set
34 out in the petition. A waiver or variance, if granted, shall
35 be drafted by the agency so as to provide the narrowest

1 exception possible to the provisions of the rule. The agency
2 may place any condition on a waiver or a variance that the
3 agency finds desirable to protect the public health, safety,
4 and welfare. A waiver or variance shall not be permanent,
5 unless the petitioner can show that a temporary waiver or
6 variance would be impracticable. If a temporary waiver or
7 variance is granted, there is no automatic right to renewal.
8 At the sole discretion of the agency, a waiver or variance may
9 be renewed if the agency finds all of the factors set out in
10 subsection 2 remain valid.

11 4. A grant or denial of a waiver or variance petition
12 shall be indexed, filed, and available for public inspection
13 as provided in section 17A.3. The administrative code editor
14 and the administrative rules coordinator shall devise a
15 mechanism to identify rules for which a petition for a waiver
16 or variance has been granted or denied and make this
17 information available to the public.

18 5. Semiannually, each agency which permits the granting of
19 petitions for waivers or variances shall prepare a report of
20 these actions identifying the rules for which a waiver or
21 variance has been granted or denied, the number of times a
22 waiver or variance was granted or denied for each rule, a
23 citation to the statutory provisions implemented by these
24 rules, and a general summary of the reasons justifying the
25 agencies' actions on the waiver or variance request. To the
26 extent practicable, this report shall detail the extent to
27 which the granting of a waiver or variance has established a
28 precedent for additional waivers or variances and the extent
29 to which the granting of a waiver or variance has affected the
30 general applicability of the rule itself. Copies of this
31 report shall be provided semiannually to the administrative
32 rules coordinator and the administrative rules review
33 committee.

34 6. For purposes of this section, "a waiver or variance"
35 means an agency action which suspends in whole or in part the

1 requirements or provisions of a rule as applied to an
2 identified person on the basis of the particular circumstances
3 of that person.

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HOUSE FILE 2206

S-5416

1 Amend House File 2206, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, by inserting after line 3 the
4 following:
5 "Sec. ____ . Executive order number 11, enacted by
6 the governor on September 14, 1999, is declared null
7 and void."
8 2. By renumbering as necessary.

By STEVE KING
JEFF LAMBERTI

W/D 4/19/00 (p. 1263)
S-5416 FILED APRIL 13, 2000

HOUSE FILE 2206

AN ACT
PROVIDING FOR THE WAIVER OR VARIANCE OF ADMINISTRATIVE RULES
BY STATE AGENCIES.

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

Section 1. NEW SECTION. 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 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 shall prepare a report of these actions identifying 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 shall detail 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.

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.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2206, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 5/9, 2000

THOMAS J. VILSACK
Governor