

Senate File 358 - Introduced

SENATE FILE 358
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SF 230)

A BILL FOR

1 An Act amending the Iowa administrative procedure Act as it
2 relates to public participation in the rulemaking process,
3 the adoption and effectiveness of administrative rules, and
4 the delegation of rulemaking authority to administrative
5 agencies.

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

1 Section 1. Section 17A.4, subsection 1, paragraph b, Code
2 2011, is amended to read as follows:

3 b. (1) Afford all interested persons not less than twenty
4 days to submit data, views, or arguments in writing. If timely
5 requested in writing by twenty-five interested persons, by a
6 governmental subdivision, by the administrative rules review
7 committee, by an agency, or by an association having not less
8 than twenty-five members, the agency must give interested
9 persons an opportunity to make oral presentation.

10 (2) To the extent practicable, the agency shall provide an
11 opportunity to make these oral presentations using the Iowa
12 communications network or other electronic means and provide
13 public access at multiple sites throughout the state. If
14 a request is received from twenty-five interested persons
15 residing in the same city or county, the agency shall provide
16 an opportunity for oral presentation in that city or county.

17 (3) The opportunity for oral presentation must be held
18 at least twenty days after publication of the notice of its
19 time and place in the Iowa administrative bulletin. The
20 agency shall consider fully all written and oral submissions
21 respecting the proposed rule. Within one hundred eighty
22 days following either the notice published according to the
23 provisions of paragraph "a" or within one hundred eighty
24 days after the last date of the oral presentations on the
25 proposed rule, whichever is later, the agency shall adopt a
26 rule pursuant to the rulemaking proceeding or shall terminate
27 the proceeding by publishing notice of termination in the Iowa
28 administrative bulletin.

29 Sec. 2. Section 17A.4, subsections 2 and 3, Code 2011, are
30 amended to read as follows:

31 2. An agency shall include in a preamble to each rule
32 ~~it adopts a brief explanation of the principal reasons for~~
33 its action pursuant to section 17A.5 a concise statement
34 of the principal reasons for and against the rule adopted,
35 incorporating in the statement the reasons for overruling

1 considerations urged against the rule and, if applicable, a
 2 brief explanation of the principal reasons for its failure to
 3 provide in that rule for the waiver of the rule in specified
 4 situations if no such waiver provision is included in the rule.
 5 ~~This explanatory requirement does not apply when the agency~~
 6 ~~adopts a rule that only defines the meaning of a provision of~~
 7 ~~law if the agency does not possess delegated authority to bind~~
 8 ~~the courts to any extent with its definition. In addition, if~~
 9 ~~requested to do so by an interested person, either prior to~~
 10 ~~adoption or within thirty days thereafter, the agency shall~~
 11 ~~issue a concise statement of the principal reasons for and~~
 12 ~~against the rule adopted, incorporating therein the reasons for~~
 13 ~~overruling considerations urged against the rule. This concise~~
 14 ~~statement shall be issued either at the time of the adoption of~~
 15 ~~the rule or within thirty-five days after the agency receives~~
 16 ~~the request.~~

17 3. When an agency for good cause finds that notice and
 18 public participation would be unnecessary, impracticable, or
 19 contrary to the public interest, the provisions of subsection 1
 20 shall be inapplicable. The agency shall incorporate in each
 21 rule issued in reliance upon this provision either the finding
 22 and a brief statement of the reasons for the finding, or a
 23 statement that the rule is within a very narrowly tailored
 24 category of rules whose issuance has previously been exempted
 25 from subsection 1 by a special rule relying on this provision
 26 and including such a finding and statement of reasons for the
 27 entire category. ~~If the administrative rules review committee~~
 28 ~~by a two-thirds vote, the governor, or the attorney general~~
 29 ~~files with the administrative code editor an objection to the~~
 30 ~~adoption of any rule pursuant to this subsection, that rule~~
 31 ~~shall cease to be effective one hundred eighty days after~~
 32 ~~the date the objection was filed. A copy of the objection,~~
 33 ~~properly dated, shall be forwarded to the agency at the time of~~
 34 ~~filing the objection. In any action contesting a rule adopted~~
 35 ~~pursuant to this subsection, the burden of proof shall be on~~

1 the agency to show that the procedures of subsection 1 were
2 impracticable, unnecessary, or contrary to the public interest
3 and that, if a category of rules was involved, the category
4 was very narrowly tailored. A rule adopted pursuant to this
5 subsection shall remain in effect for one hundred eighty days,
6 unless a shorter period is specified in the rule.

7 Sec. 3. Section 17A.23, Code 2011, is amended to read as
8 follows:

9 **17A.23 Construction — delegation of authority.**

10 1. Except as expressly provided otherwise by this chapter
11 or by another statute referring to this chapter by name, the
12 rights created and the requirements imposed by this chapter
13 shall be in addition to those created or imposed by every other
14 statute in existence on July 1, 1975, or enacted after that
15 date. If any other statute in existence on July 1, 1975, or
16 enacted after that date diminishes a right conferred upon a
17 person by this chapter or diminishes a requirement imposed upon
18 an agency by this chapter, this chapter shall take precedence
19 unless the other statute expressly provides that it shall take
20 precedence over all or some specified portion of this named
21 chapter.

22 2. This chapter shall be construed broadly to effectuate
23 its purposes. This chapter shall also be construed to apply
24 to all agencies not expressly exempted by this chapter or by
25 another statute specifically referring to this chapter by
26 name; and except as to proceedings in process on July 1, 1975,
27 this chapter shall be construed to apply to all covered agency
28 proceedings and all agency action not expressly exempted by
29 this chapter or by another statute specifically referring to
30 this chapter by name.

31 3. An agency shall have only that authority or discretion
32 delegated to or conferred upon the agency by law and shall not
33 expand or enlarge its authority or discretion beyond the powers
34 delegated to or conferred upon the agency. Unless otherwise
35 specifically provided in statute, any grant of rulemaking

1 authority shall be construed narrowly.

2 EXPLANATION

3 This bill makes a number of changes to the rulemaking
4 process. The bill requires administrative agencies, when
5 feasible, to hold rulemaking hearings in varied locations
6 throughout the state via the Iowa communications network and
7 provides that a hearing must be held in a particular city or
8 county when 25 interested persons from that city or county make
9 the request.

10 Every adopted rule must be accompanied by a concise
11 statement of the principal reasons for and against the rule
12 adopted; under current law such a statement is only provided
13 on request.

14 The bill also provides that so-called "emergency" rules are
15 in effect for only 180 days.

16 The bill also establishes a new rule of statutory
17 construction: Unless otherwise specifically provided in
18 statute, any grant of rulemaking authority shall be construed
19 narrowly.