

Senate File 138 - Introduced

SENATE FILE 138

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A BILL FOR

1 An Act relating to the review of administrative rules and the
2 rulemaking process.

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

1 Section 1. Section 7.17, Code 2013, is amended to read as
2 follows:

3 **7.17 Office of administrative rules coordinator.**

4 1. The governor shall establish the office of the
5 administrative rules coordinator, and appoint its staff, which
6 shall be a part of the governor's office.

7 2. The administrative rules coordinator shall receive all
8 notices and rules adopted pursuant to chapter 17A and provide
9 the governor with an opportunity to review and object to any
10 rule as provided in chapter 17A.

11 3. a. The administrative rules coordinator shall create a
12 citizens' committee, consisting of regulators, stakeholders,
13 members of the public, and legislators, to advise the
14 administrative rules coordinator on rulemaking issues.

15 b. The members of the committee shall not be paid a per diem
16 but shall be reimbursed for travel expenses.

17 Sec. 2. Section 17A.4, subsection 1, paragraph b, Code 2013,
18 is amended to read as follows:

19 b. (1) Afford all interested persons not less than twenty
20 days to submit data, views, or arguments in writing, including
21 in an electronic format. If timely requested in writing by
22 twenty-five interested persons, by a governmental subdivision,
23 by the administrative rules review committee, by an agency, or
24 by an association having not less than twenty-five members, the
25 agency must give interested persons an opportunity to make oral
26 presentation.

27 (2) To the extent practicable, the agency shall provide an
28 opportunity to make these oral presentations using the Iowa
29 communications network or other electronic means and provide
30 public access at multiple sites throughout the state. If
31 a request is received from twenty-five interested persons
32 residing in the same city or county, the agency shall provide
33 an opportunity for oral presentation in that city or county.

34 (3) The opportunity for oral presentation must be held
35 at least twenty days after publication of the notice of its

1 time and place in the Iowa administrative bulletin. The
 2 agency shall consider fully all written and oral submissions
 3 respecting the proposed rule. Within one hundred eighty
 4 days following either the notice published according to the
 5 provisions of paragraph "a" or within one hundred eighty
 6 days after the last date of the oral presentations on the
 7 proposed rule, whichever is later, the agency shall adopt a
 8 rule pursuant to the rulemaking proceeding or shall terminate
 9 the proceeding by publishing notice of termination in the Iowa
 10 administrative bulletin.

11 Sec. 3. Section 17A.4, subsection 2, Code 2013, is amended
 12 to read as follows:

13 2. An agency shall include in a preamble to each rule
 14 it adopts ~~a brief explanation of the principal reasons for~~
 15 ~~its action~~ pursuant to section 17A.5 a concise statement
 16 of the principal reasons for and against the rule adopted,
 17 incorporating in the statement the reasons for overruling
 18 considerations urged against the rule and, if applicable, a
 19 brief explanation of the principal reasons for its failure
 20 to provide in ~~that~~ the rule for the waiver of the rule in
 21 specified situations if no such waiver provision is included
 22 in the rule. ~~This explanatory requirement does not apply when~~
 23 ~~the agency adopts a rule that only defines the meaning of a~~
 24 ~~provision of law if the agency does not possess delegated~~
 25 ~~authority to bind the courts to any extent with its definition.~~
 26 ~~In addition, if requested to do so by an interested person,~~
 27 ~~either prior to adoption or within thirty days thereafter, the~~
 28 ~~agency shall issue a concise statement of the principal reasons~~
 29 ~~for and against the rule adopted, incorporating therein the~~
 30 ~~reasons for overruling considerations urged against the rule.~~
 31 ~~This concise statement shall be issued either at the time of~~
 32 ~~the adoption of the rule or within thirty-five days after the~~
 33 ~~agency receives the request.~~

34 Sec. 4. NEW SECTION. 17A.4B Job impact statement.

35 1. a. "*Benefit*" means the reasonably identifiable and

1 quantifiable positive effect or outcome that is expected to
2 result from implementation of a rule.

3 *b. "Cost"* means reasonably identifiable, significant, direct
4 or indirect, economic impact that is expected to result from
5 implementation of and compliance with a rule.

6 *c. "Cost-benefit analysis"* means regulatory analysis
7 to provide the public with transparency regarding the
8 cost-effectiveness of a rule, including the economic costs and
9 the effectiveness weighed by the agency in adopting the rule.
10 "*Cost-benefit analysis*" includes a comparison of the probable
11 costs and benefits of a rule to the probable costs and benefits
12 of less intrusive or less expensive methods that exist for
13 achieving the purpose of the rule.

14 *d. "Jobs"* means private sector employment including
15 self-employment and areas for potential for employment growth.

16 *e. "Jobs impact statement"* means a statement that does all
17 of the following:

18 (1) Identifies the purpose of a rule and the applicable
19 section of the statute that provides specific legal authority
20 for the agency to adopt the rule.

21 (2) Identifies and describes the cost that the agency
22 anticipates state agencies, local governments, the public, and
23 the regulated entities, including regulated businesses and
24 self-employed individuals, will incur due to the implementation
25 of and complying with a rule.

26 (3) Determines whether a rule would have a positive
27 or negative impact on private sector jobs and employment
28 opportunities in Iowa.

29 (4) Describes and quantifies the nature of the impact a rule
30 will have on private sector jobs and employment opportunities
31 including the categories of jobs and employment opportunities
32 that are affected by the rule, and the number of jobs or
33 potential job opportunities and the regions of the state
34 affected by the rule.

35 (5) Identifies, where possible, the additional costs to

1 employers per employee due to implementation of and complying
2 with a rule.

3 (6) Includes other relevant analysis requested by the
4 administrative rules coordinator.

5 2. Prior to implementation of a rule, an agency shall
6 take steps to minimize the adverse impact on jobs and
7 the development of new employment opportunities due to
8 implementation of the rule.

9 3. An agency shall provide a jobs impact statement to the
10 administrative rules coordinator prior to publication of a
11 notice of intended action or the publication of a rule without
12 notice.

13 4. The jobs impact statement shall be published as part
14 of the preamble to the notice of rulemaking in the Iowa
15 administrative bulletin, unless the administrative rules
16 coordinator determines that publication of the entire jobs
17 impact statement would be unnecessary or impractical.

18 5. An agency shall accept comments and information
19 from stakeholders prior to final preparation of the jobs
20 impact statement. Any concerned private sector employer or
21 self-employed individual, potential employer, potential small
22 business, or member of the public may submit information
23 relating to a jobs impact statement upon a request for
24 information or prior to publication of a notice of intended
25 action or publication of a rule without notice by an agency.

26 6. If a jobs impact statement is revised after a notice
27 of intended action or a rule without notice is published, the
28 revised jobs impact statement shall be published as part of
29 the preamble to the adopted version of the rule, unless the
30 administrative rules coordinator determines that publication
31 of the entire jobs impact statement would be unnecessary or
32 impractical.

33 7. The analysis in the jobs impact statement shall give
34 particular weight to jobs in production sectors of the economy
35 which includes the manufacturing and agricultural sectors of

1 the economy and shall include analysis, where applicable, of
2 the impact of the rule on expansion of existing businesses or
3 facilities.

4 8. The administrative rules coordinator may waive the jobs
5 impact statement requirement for rules proposed on an emergency
6 basis or if unnecessary or impractical.

7 9. By July 1, 2014, and every five years thereafter, an
8 agency shall prepare a comprehensive jobs impact statement
9 for all of the agency's rules. An agency shall transmit
10 each five-year comprehensive jobs impact statement to the
11 administrative rules coordinator, the administrative rules
12 review committee, and the administrative code editor. The
13 administrative code editor shall publish the statement, or a
14 summary, in the Iowa administrative bulletin.

15 Sec. 5. NEW SECTION. 17A.4C **Negotiated rulemaking.**

16 1. An agency shall create a negotiated rulemaking group if
17 required by statute. An agency may, on its own motion or upon
18 request, create a negotiated rulemaking group if the agency
19 determines that a negotiated rulemaking group can adequately
20 represent the interests that will be significantly affected by
21 a draft rule proposal and that it is feasible and appropriate
22 in the particular rulemaking. Notice of the creation of a
23 negotiated rulemaking group shall be published in the Iowa
24 administrative bulletin. Upon establishing a negotiated
25 rulemaking group, the agency shall also specify a time frame
26 for group deliberations.

27 2. Unless otherwise provided by statute, the agency shall
28 appoint a sufficient number of members to the group so that
29 a fair cross section of interests and opinions regarding the
30 draft rule proposal is represented. One person shall be
31 appointed to represent the agency. The group shall select its
32 own chairperson and adopt its rules of procedure. All meetings
33 of the group shall be open to the public. A majority of the
34 membership constitutes a quorum. Members shall not receive
35 any per diem payment but shall be reimbursed for all necessary

1 expenses. Any vacancy shall be filled in the same manner as
2 the initial appointment.

3 3. Prior to the publication of a notice of intended action,
4 the group shall consider the terms or substance of the rule
5 proposed by the agency and shall attempt to reach a consensus
6 on the advisability of adopting the draft rule proposal.

7 4. If a group reaches a consensus on a draft rule proposal,
8 the group shall transmit to the agency a report containing the
9 consensus on the draft rule proposal. If the group does not
10 reach a consensus on a draft rule proposal within the specified
11 time frame, the group shall transmit to the agency a report
12 stating that inability to reach a consensus and specifying any
13 areas in which the group reached a consensus. The group may
14 include in a report any other information, recommendations,
15 or materials that the group considers appropriate. Any group
16 member may include as an addendum to the report additional
17 information, recommendations, or materials. A report issued
18 under this subsection shall not be considered final agency
19 action for purposes of judicial review.

20 5. Unless otherwise provided by statute, following
21 consideration of a draft rule proposal by a negotiated
22 rulemaking group, the agency may commence rulemaking as
23 provided in section 17A.4. The group is automatically
24 abolished upon the agency's adoption of the rule pursuant to
25 the provisions of section 17A.5.

26 Sec. 6. Section 17A.7, subsection 2, Code 2013, is amended
27 by striking the subsection and inserting in lieu thereof the
28 following:

29 2. Over a five-year period of time, an agency shall conduct
30 an ongoing and comprehensive review of all of the agency's
31 rules. The goal of the review is the identification and
32 elimination of all rules of the agency that are outdated,
33 redundant, overbroad, ineffective, unnecessary, or otherwise
34 undesirable. An agency shall commence its review by developing
35 a plan of review in consultation with major stakeholders and

1 constituent groups. As part of its review, an agency shall
2 review existing policy and interpretive statements or similar
3 documents to determine whether it would be necessary or
4 appropriate to adopt these statements or documents as rules.

5 *a.* An agency shall establish its five-year plan for review
6 of its rules and publish the plan in the Iowa administrative
7 bulletin.

8 *b.* An agency's plan for review shall do all of the
9 following:

10 (1) Contain a schedule that lists when the review of each
11 rule or rule group will occur.

12 (2) State the method by which the agency will analyze
13 the rule under review regarding the considerations listed in
14 paragraph "c".

15 (3) Provide a means for public participation in the review
16 process and specify how interested persons may participate in
17 the review.

18 (4) Identify instances where the agency may require an
19 exception to the review requirements.

20 (5) Provide a process for ongoing review of rules after the
21 initial five-year review period has expired.

22 *c.* An agency shall analyze its rules under review by
23 considering all of the following:

24 (1) The need for the rule.

25 (2) The clarity of the rule.

26 (3) The intent and legal authority for the rule.

27 (4) The qualitative and quantitative benefits and costs of
28 the rule.

29 (5) The fairness of the rule.

30 *d.* When an agency completes its five-year review of its
31 rules, the agency shall provide a summary of the results to the
32 administrative rules coordinator and the administrative rules
33 review committee.

34 Sec. 7. Section 17A.23, Code 2013, is amended to read as
35 follows:

1 **17A.23 Construction — delegation of authority.**

2 1. Except as expressly provided otherwise by this chapter
3 or by another statute referring to this chapter by name, the
4 rights created and the requirements imposed by this chapter
5 shall be in addition to those created or imposed by every other
6 statute in existence on July 1, 1975, or enacted after that
7 date. If any other statute in existence on July 1, 1975, or
8 enacted after that date diminishes a right conferred upon a
9 person by this chapter or diminishes a requirement imposed upon
10 an agency by this chapter, this chapter shall take precedence
11 unless the other statute expressly provides that it shall take
12 precedence over all or some specified portion of this ~~named~~
13 cited chapter.

14 2. This chapter shall be construed broadly to effectuate
15 its purposes. This chapter shall also be construed to apply
16 to all agencies not expressly exempted by this chapter or by
17 another statute specifically referring to this chapter by ~~name~~
18 citation; and except as to proceedings in process on July 1,
19 1975, this chapter shall be construed to apply to all covered
20 agency proceedings and all agency action not expressly exempted
21 by this chapter or by another statute specifically referring to
22 this chapter by ~~name~~ citation.

23 3. An agency shall have only that authority or discretion
24 delegated to or conferred upon the agency by law and shall not
25 expand or enlarge its authority or discretion beyond the powers
26 delegated to or conferred upon the agency. Unless otherwise
27 specifically provided in statute, a grant of rulemaking
28 authority shall be construed narrowly.

29 Sec. 8. NEW SECTION. **17A.24 Rule implementation of federal**
30 **statute, regulation, or policy.**

31 1. Except as otherwise explicitly authorized by state law,
32 an agency charged with the implementation of a federal statute,
33 regulation, or policy shall not implement the federal statute,
34 regulation, or policy in a manner that exceeds the specific
35 requirements of the federal statute, regulation, or policy.

1 2. Any portion of an agency rule or policy that implements
2 a federal statute, regulation, or policy and that exceeds the
3 specific requirements of the federal statute, regulation, or
4 policy is automatically superseded by the specific requirements
5 of that federal statute, regulation, or policy.

6 Sec. 9. ENVIRONMENTAL REGULATION STUDY.

7 1. The legislative council, in consultation with the
8 department of natural resources, shall establish a study to
9 analyze the projected financial effects of current and proposed
10 United States environmental protection agency regulations and
11 Iowa department of natural resources rules on Iowa cities over
12 a ten-year period.

13 2. The study should include an analysis of projected
14 financial costs of such regulations and rules on a hypothetical
15 small Iowa community, medium-sized Iowa community, and large
16 Iowa community.

17 3. The study shall be concluded by June 30, 2014, and a
18 report shall be provided to the members of the general assembly
19 and to the governor.

20 EXPLANATION

21 This bill relates to the review of administrative rules and
22 the rulemaking process.

23 CITIZENS' ADVISORY COMMITTEE. The bill requires that the
24 administrative rules coordinator create a citizens' committee,
25 to advise the administrative rules coordinator on rulemaking
26 issues. The members of the committee shall not be paid a per
27 diem but shall be reimbursed for travel expenses.

28 RULEMAKING HEARINGS THROUGHOUT STATE. The bill requires
29 administrative agencies, when feasible, to hold rulemaking
30 hearings in varied locations throughout the state via the Iowa
31 communications network or other electronic means and provides
32 that a hearing must be held in a particular city or county
33 when 25 interested persons from that city or county make the
34 request.

35 PRINCIPAL REASONS FOR AND AGAINST RULE. The bill requires

1 that every adopted rule must be accompanied by a concise
2 statement of the principal reasons for and against the rule
3 adopted. Under current law such a statement is only provided
4 on request.

5 JOBS IMPACT STATEMENTS. The bill requires that every
6 proposed rule under a notice of intended action or publication
7 without notice contain a jobs impact statement which outlines
8 the objective and statutory authority of the rule and analyzes
9 and sets out in detail the impact of the proposed rule on state
10 agencies, local governments, the public, and the regulated
11 entities, including regulated businesses and self-employed
12 individuals affected by the rule. The statement must also
13 determine whether a proposed rule would have a positive
14 or negative impact on private sector jobs and employment
15 opportunities.

16 Commencing July 1, 2014, and every five years thereafter,
17 each agency shall prepare a jobs impact statement for all of
18 the agency's rules. The statement will be published in the
19 Iowa administrative bulletin.

20 As part of this requirement, an agency is required to
21 take steps to minimize the adverse impact on jobs and the
22 development of new employment opportunities before proposing
23 a rule.

24 The administrative rules coordinator may waive the jobs
25 impact statement requirement for emergency-filed rules or if
26 unnecessary or impractical.

27 NEGOTIATED RULEMAKING GROUPS. If required by statute,
28 this bill requires an agency to create an ad hoc negotiated
29 rulemaking group to review draft rule proposals prior to
30 commencing a rulemaking proceeding. Where a statute does
31 not require this review, the bill allows an agency to create
32 such a review group. Members are appointed by the agency
33 and the composition must adequately represent a fair balance
34 of the interests affected by the rule. Once such a group is
35 created, the agency may only commence rulemaking after the

1 group has considered the draft rule proposal in question. This
2 provision is based on similar provisions found in the federal
3 Administrative Procedures Act.

4 USER-FRIENDLY INTERNET SITES. The bill requires each
5 agency to make available to the public a uniform, searchable,
6 and user-friendly rules database, published on an internet
7 site, subject to the direction of the administrative rules
8 coordinator. Each agency's internet site must contain
9 specified information relating to the agency's rules and
10 available procedures for public participation.

11 FIVE-YEAR CYCLE OF AGENCY REVIEW OF RULES. Current
12 law requires that each state agency review all of its
13 administrative rules on a five-year cycle. The plan for this
14 review must be developed in consultation with stakeholders
15 and constituent groups. The goal of the review is the
16 identification and elimination of all rules of the agency that
17 are outdated, redundant, overbroad, ineffective, unnecessary,
18 or otherwise undesirable.

19 The bill requires that each agency develop a plan for
20 conducting the five-year review, which includes detailing the
21 methodology for conducting the review and a means for public
22 participation.

23 NARROW CONSTRUCTION OF RULES. The bill also establishes
24 a new rule of statutory construction: Unless otherwise
25 specifically provided in statute, any grant of rulemaking
26 authority shall be construed narrowly.

27 FEDERAL LAW IMPLEMENTATION. The bill also provides that
28 state implementation of a federal statute, regulation,
29 or policy by a state agency shall not exceed the specific
30 requirements of the federal statute, regulation, or
31 policy, except as specifically allowed by state law. Any
32 portion of a state rule or policy that implements a federal
33 statute, regulation, or policy and that exceeds the specific
34 requirements of the federal statute, regulation, or policy is
35 automatically superseded by the specific requirements of that

1 federal statute, regulation, or policy.

2 ENVIRONMENTAL RULES STUDY. The bill provides that the
3 legislative council, in consultation with the department of
4 natural resources, shall establish a study to analyze the
5 projected financial effects of current and proposed United
6 States environmental protection agency regulations and Iowa
7 department of natural resources rules on Iowa cities over a
8 10-year period. The report of the study must be completed by
9 June 30, 2014.