

House File 2368 - Introduced

HOUSE FILE 2368

BY JACOBSEN

A BILL FOR

1 An Act requiring rescission of existing regulations by state
2 agencies when new regulations are adopted, providing for
3 approval by the department of management of rulemaking,
4 providing related procedures, and including effective date
5 and applicability provisions.

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

1 Section 1. NEW SECTION. 17A.24 Required rescission
2 of regulations — approval of rule filings by department of
3 management — report.

4 1. *Definitions.* For purposes of this section:

5 a. "Department" means the department of management.

6 b. "Notice of intended action" includes an amended notice
7 of intended action.

8 c. "Regulation" means a rule as described in the preface
9 to the Iowa administrative bulletin and does not include a
10 subrule or other subunit or an entry designated in the Iowa
11 administrative code as reserved or rescinded.

12 d. "Rule filing" means a notice of intended action pursuant
13 to section 17A.4, subsection 1, paragraph "a", a rule filed
14 without notice pursuant to section 17A.4, subsection 3, or a
15 rule adopted pursuant to section 17A.5.

16 2. *Required rescission of regulations.*

17 a. A rule filing that would add one or more regulations to
18 the Iowa administrative code shall also rescind a number of
19 regulations equal to at least twice the number of regulations
20 added. If a regulation is rescinded and adopted anew in the
21 same rule filing, the rescission of the prior rule shall count
22 as one of the two required rescissions for purposes of this
23 paragraph.

24 b. The department shall ensure that compliance with
25 paragraph "a" is not accomplished solely by reorganizing or
26 redesignating existing regulations by combining regulations or
27 redesignating regulations as subrules or other subunits of the
28 Iowa administrative code. The department may disapprove any
29 rule filing submitted pursuant to subsection 3 that appears to
30 be drafted so as to circumvent the requirements of paragraph
31 "a".

32 c. This subsection does not apply to rule filings submitted
33 to the department pursuant to subsection 3 by an agency within
34 seventy-eight weeks of the effective date of the statute that
35 established the agency.

1 3. *Submission of rules to department of management.* Before
2 an agency submits a rule filing to the administrative rules
3 coordinator and the administrative code editor pursuant to
4 section 17A.4 or 17A.5, the agency shall submit the rule filing
5 to the department for approval. The department shall prescribe
6 procedures for making such submissions. The agency may include
7 with the submission any additional information that may assist
8 the department in making a determination pursuant to subsection
9 5.

10 4. *Regulatory baseline statement.* The agency shall include
11 a regulatory baseline statement with a rule filing submitted to
12 the department pursuant to subsection 3. The department shall
13 not approve a rule filing that does not include a regulatory
14 baseline statement. The department shall post all regulatory
15 baseline statements received on the department's internet
16 site. A regulatory baseline statement shall contain all of the
17 following information:

18 a. The applicable portion of the statute that provides
19 specific legal authority for the agency to adopt the rule
20 filing.

21 b. The purpose of the rule filing.

22 c. If the rule filing would add one or more regulations to
23 the Iowa administrative code, a list of the regulations to be
24 added as well as the regulations to be rescinded in compliance
25 with subsection 2. In lieu of such a list, the agency may
26 include a request for exemption from subsection 2 pursuant to
27 subsection 7.

28 5. *Evaluation by department of management.* In determining
29 whether to approve a rule filing, the department, in
30 consultation with the administrative rules coordinator, shall
31 evaluate the rule filing and included regulatory baseline
32 statement using all of the following criteria:

33 a. Whether the rule filing is the only effective and
34 necessary means to achieve the desired outcome, including an
35 analysis of all of the following:

1 (1) Whether the rule filing complements and does not
2 duplicate existing rules.

3 (2) Whether the rule filing would be simple to administer
4 in terms of both enforcement by the agency and compliance by
5 any regulated persons.

6 *b.* The degree to which the rule filing or related rules
7 or agency procedures include performance measures that are
8 directly related to the desired outcome, including but not
9 limited to a provision establishing periodic review to ensure
10 intended outcomes or a provision providing for the rescission
11 of the rule filing or related rules upon a determination that
12 the rule filing or related rules no longer achieve the desired
13 original outcomes.

14 *c.* The inclusion of clear justifications for the
15 implementation of the rule filing, including the development
16 or existence of implementation processes for the rule filing,
17 which processes:

18 (1) Are transparent and easily accessible by the public.

19 (2) Contain appropriate, modern methods of public
20 notification.

21 (3) Are written in plain language.

22 (4) Are designed to allow citizens and businesses to clearly
23 understand their rights and obligations under the rule filing.

24 *d.* Whether the rule filing is the most cost-effective means
25 to achieve the desired outcome and to what extent the benefits
26 of the rule filing are greater than the burdens it imposes.

27 *e.* A determination that the rule filing does not have
28 a detrimental effect on the state's economy, including a
29 determination that all of the following apply to the rule
30 filing:

31 (1) The rule filing does not have a negative effect on the
32 economic competitiveness of the state.

33 (2) The rule filing is not more difficult to comply with
34 than similar regulatory requirements in similarly situated
35 states.

1 (3) The rule filing is compatible with the following
2 strategic goals for this state:

3 (a) Promoting equal application of regulatory requirements
4 for all affected businesses and industries.

5 (b) Increased job creation.

6 (c) Increased economic growth.

7 *f.* Whether the rule filing is specifically required by a
8 provision of law.

9 6. *Approval by department of management.* If the department
10 approves a rule filing, the agency shall submit the rule filing
11 to the administrative rules coordinator and the administrative
12 code editor pursuant to section 17A.4 or 17A.5, as applicable.
13 If the department does not approve a rule filing, the
14 department shall provide the agency with a written explanation
15 for its disapproval.

16 7. *Exemptions.*

17 *a.* An agency may include a request for exemption from the
18 requirements of subsection 2 or 5 or both with its submission
19 to the department pursuant to subsection 3. The request shall
20 include a detailed justification for the exemption. The
21 department shall only grant an exemption if the department
22 determines that the exemption is necessary to protect the
23 health, safety, or welfare of the citizens of this state.

24 *b.* An agency that receives an exemption from subsection 2
25 for a rule filing that is not a notice of intended action shall
26 subsequently adopt rules that rescind regulations sufficient
27 to meet the requirements of subsection 2 for the exempted rule
28 filing. If an agency does not do so, all regulations added to
29 the Iowa administrative code in the exempted rule filing are
30 void seventy-eight weeks from the date of publication of the
31 exempted filing in the Iowa administrative bulletin. An agency
32 shall designate in the regulatory baseline statement included
33 with a subsequent rule filing the regulations rescinded in
34 compliance with this paragraph.

35 *c.* If the department grants an exemption from subsection 5

1 for a rule filing, the department shall complete a subsequent
2 review of the rule filing based on the criteria provided in
3 subsection 5 within two weeks. If the department determines
4 that the rule filing did not satisfy the criteria provided in
5 subsection 5, all regulations added to the Iowa administrative
6 code in the exempted rule filing are void seventy-eight weeks
7 from the date of publication of the exempted filing in the Iowa
8 administrative bulletin.

9 *d.* If a rule filing receives an exemption pursuant to
10 this section, the department shall provide the agency's
11 request for exemption and the department's determination to
12 the administrative rules coordinator and the administrative
13 code editor. The exemption and determination shall be
14 published as part of the preamble to the rule filing in the
15 Iowa administrative bulletin unless the administrative code
16 editor determines that publication of the entire exemption and
17 determination would be unnecessary or impractical.

18 8. *Report.* The department shall by November 1 each year,
19 beginning in 2021, submit a report to the general assembly and
20 the governor on the total number of regulations included in
21 the Iowa administrative code, including a calculation of the
22 change in the total from November 1 of the previous year. The
23 report shall include any recommendations for amendments to this
24 section.

25 9. *Technical assistance by legislative services agency.* The
26 legislative services agency shall provide the department
27 with information regarding the Iowa administrative code
28 and technical assistance as necessary to facilitate the
29 implementation of this section.

30 Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate
31 importance, takes effect upon enactment.

32 Sec. 3. APPLICABILITY. This Act applies to rule filings,
33 as defined in section 17A.24, subsection 1, as enacted by this
34 Act, submitted for publication in the Iowa administrative
35 bulletin beginning in volume XLIII, number 8, dated October 7,

1 2020.

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EXPLANATION

3 The inclusion of this explanation does not constitute agreement with
4 the explanation's substance by the members of the general assembly.

5 This bill relates to procedures for rulemaking by executive
6 branch agencies under Code chapter 17A, the Iowa administrative
7 procedure Act.

8 The bill provides that a rule filing that would add one
9 or more regulations to the Iowa administrative code shall
10 also rescind a number of regulations equal to at least twice
11 the number of regulations added. The bill specifies that if
12 a regulation is rescinded and adopted anew in the same rule
13 filing, the rescission of the prior rule shall count as one of
14 the two required rescissions. This requirement does not apply
15 to rule filings by an agency within 78 weeks of the effective
16 date of the statute that established the agency.

17 The bill defines "regulation" as a rule as described in the
18 preface to the Iowa administrative bulletin, not including a
19 subrule or other subunit or an entry designated in the Iowa
20 administrative code as reserved or rescinded. The bill defines
21 "rule filing" as a notice of intended action, a rule filed
22 without notice, or an adopted rule.

23 The bill requires that an agency, before submitting a
24 rule filing to the administrative rules coordinator and the
25 administrative code editor as required under current law,
26 to submit the rule filing to the department of management
27 for approval. The bill requires that the department ensure
28 compliance with the requirement to rescind a number of
29 regulations equal to at least twice the number of regulations
30 added in a rule filing is not accomplished solely by
31 reorganizing or redesignating existing regulations. The bill
32 authorizes the department to disapprove any rule filing that
33 appears to be drafted so as to circumvent the requirement.

34 The bill requires an agency to include a regulatory
35 baseline statement with the submission. The bill prohibits

1 the department from approving a rule filing that does not
2 include such a statement. The statement shall include the
3 applicable portion of the statute that provides specific legal
4 authority for the agency to adopt the rule filing, the purpose
5 of the rule filing, and, if the rule filing would add one or
6 more regulations to the Iowa administrative code, a list of
7 the regulations to be added as well as the regulations to be
8 rescinded in compliance with the bill. In lieu of such a list,
9 the agency may include a request for exemption as provided in
10 the bill.

11 The bill provides criteria for evaluation of rule filings by
12 the department, in consultation with the administrative rules
13 coordinator, in determining whether to provide approval. The
14 criteria relate to effectiveness and necessity, performance
15 measures, clear justifications, cost effectiveness, economic
16 impact, and whether the regulations are specifically required
17 by a provision of law.

18 If the department approves a rule filing, the agency shall
19 submit the rule filing to the administrative rules coordinator
20 and the administrative code editor as required under current
21 law. If the department does not approve a rule filing, the
22 department shall provide the agency with a written explanation
23 for its disapproval.

24 The bill provides a process for an agency to request an
25 exemption from the department from the requirement to rescind
26 a number of regulations equal to at least twice the number
27 of regulations added in a rule filing, the requirement for
28 an evaluation of the rule filing by the department, or both.
29 The request shall include a detailed justification for the
30 exemption. The department shall only grant an exemption if
31 the department determines that the exemption is necessary to
32 protect the health, safety, or welfare of the citizens of
33 Iowa. The bill provides additional procedural requirements for
34 rule filings that receive such exemptions. If the additional
35 procedural requirements are not met, regulations contained

1 in such rule filings are void 78 weeks after publication in
2 the Iowa administrative bulletin. The exemption request and
3 the department's determination regarding the request shall be
4 published in the Iowa administrative bulletin.

5 The bill requires the department to submit an annual
6 report to the general assembly and the governor by November 1
7 beginning in 2021 on the total number of regulations included
8 in the Iowa administrative code, including a calculation of the
9 change in the total from November 1 of the previous year. The
10 report shall include any recommendations regarding changes to
11 the bill.

12 The report requires the legislative services agency to
13 provide the department with information regarding the Iowa
14 administrative code and technical assistance as necessary to
15 facilitate the implementation of the bill.

16 The bill takes effect upon enactment. The bill applies to
17 rule filings, as defined in the bill, submitted for publication
18 in the Iowa administrative bulletin beginning in volume XLIII,
19 number 8, dated October 7, 2020.