

**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11 administrative code as reserved or rescinded.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 If a regulation is rescinded and adopted anew in the  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.

2

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.