

House File 302 - Introduced

HOUSE FILE 302

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9 administrative code as reserved or rescinded.

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

14 2. *Required rescission of regulations.*

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 If a regulation is rescinded and adopted anew in the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

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

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

34 3. *Submission of rules to department of management.* Before
35 an agency submits a rule filing to the administrative rules

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

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

16 a. The applicable section of the statute that provides
17 specific legal authority for the agency to adopt the rule
18 filing.

19 b. The purpose of the rule filing.

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

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

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

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

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

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

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

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

17 (2) Contain appropriate, modern methods of public
18 notification.

19 (3) Are written in plain language.

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

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

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

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

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

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

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

3 (b) Increased job creation.

4 (c) Increased economic growth.

5 *f.* Whether the rule filing is specifically required by a
6 provision of law.

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

14 7. *Exemptions.*

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

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

33 *c.* If the department grants an exemption from subsection 5
34 for a rule filing, the department shall complete a subsequent
35 review of the rule filing based on the criteria provided in

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

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

16 8. *Report.* The department shall by November 1 each year,
17 beginning in 2020, submit a report to the general assembly and
18 the governor on the total number of regulations included in
19 the Iowa administrative code, including a calculation of the
20 change in the total from November 1 of the previous year. The
21 report shall include any recommendations for amendments to this
22 section.

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

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

30 Sec. 3. APPLICABILITY. This Act applies to rule filings,
31 as defined in section 17A.24, subsection 1, as enacted by this
32 Act, submitted for publication in the Iowa administrative
33 bulletin beginning in volume XLII, number 8, dated October 9,
34 2019.

35

EXPLANATION

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

3 This bill relates to procedures for the adoption of rules
4 by executive branch agencies under Code chapter 17A, the Iowa
5 administrative procedure Act.

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

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

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

32 The bill requires an agency to include a regulatory
33 baseline statement with the submission. The bill prohibits
34 the department from approving a rule filing that does not
35 include such a statement. The statement shall include the

1 applicable section of the statute that provides specific legal
2 authority for the agency to adopt the rule filing, the purpose
3 of the rule filing, and, if the rule filing would add one or
4 more regulations to the Iowa administrative code, a list of
5 the regulations to be added as well as the regulations to be
6 rescinded in compliance with the bill. In lieu of such a list,
7 the agency may include a request for exemption as provided in
8 the bill.

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

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

22 The bill provides a process for an agency to request an
23 exemption from the department from the requirement to rescind
24 a number of regulations equal to at least twice the number
25 of regulations added in a rule filing, the requirement for
26 an evaluation of the rule filing by the department, or both.
27 The request shall include a detailed justification for the
28 exemption. The department shall only grant an exemption if
29 the department determines that the exemption is necessary to
30 protect the health, safety, or welfare of the citizens of
31 Iowa. The bill provides additional procedural requirements for
32 rule filings that receive such exemptions. If the additional
33 procedural requirements are not met, regulations contained
34 in such rule filings are void 78 weeks after publication in
35 the Iowa administrative bulletin. The exemption request and

1 the department's determination regarding the request shall be
2 published in the Iowa administrative bulletin.

3 The bill requires the department to submit an annual
4 report to the general assembly and the governor by November 1
5 beginning in 2020 on the total number of regulations included
6 in the Iowa administrative code, including a calculation of the
7 change in the total from November 1 of the previous year. The
8 report shall include any recommendations regarding changes to
9 the bill.

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

14 The bill takes effect upon enactment. The bill applies to
15 rule filings, as defined in the bill, submitted for publication
16 in the Iowa administrative bulletin beginning in volume XLII,
17 number 8, dated October 9, 2019.