

Senate File 2396 - Introduced

SENATE FILE 2396
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO SSB 3191)

A BILL FOR

1 An Act relating to the rulemaking process for executive branch
2 agencies and including transition provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 2B.13, subsection 2, Code 2020, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *Of.* Update the address, telephone number,
4 facsimile number, or electronic mail address of an agency,
5 officer, or other entity.

6 Sec. 2. Section 17A.4, subsections 4 and 6, Code 2020, are
7 amended to read as follows:

8 4. Any ~~notice of intended action or rule filed without~~
9 ~~notice pursuant to subsection 3 this section or section 17A.5,~~
10 ~~which that~~ necessitates additional annual expenditures of at
11 least one hundred thousand dollars or combined expenditures
12 of at least five hundred thousand dollars within five years
13 by all affected persons, including the agency itself, shall
14 be accompanied by a fiscal impact statement outlining the
15 expenditures. The agency shall promptly deliver a copy of
16 the statement to the legislative services agency. To the
17 extent feasible, the legislative services agency shall analyze
18 the statement and provide a summary of that analysis to the
19 administrative rules review committee. If the agency has
20 made a good-faith effort to comply with the requirements of
21 this subsection, the rule shall not be invalidated on the
22 ground that the contents of the statement are insufficient or
23 inaccurate.

24 6. *a.* If the administrative rules review committee created
25 by section 17A.8, the governor, or the attorney general finds
26 objection to all or some portion of a proposed or adopted rule
27 because that rule is deemed to be unreasonable, arbitrary,
28 capricious, or otherwise beyond the authority delegated to the
29 agency, the committee, governor, or attorney general may, in
30 writing, notify the agency of the objection. In the case of a
31 ~~rule issued under~~ filed without notice pursuant to subsection
32 3, or a rule made effective under section 17A.5, subsection 2,
33 paragraph "b", the committee, governor, or attorney general
34 may notify the agency of such an objection. The committee,
35 governor, or attorney general shall also file a certified

1 copy of such an objection in the office of the administrative
2 code editor and a notice to the effect that an objection has
3 been filed shall be published in the next issue of the Iowa
4 administrative bulletin and in the Iowa administrative code
5 when that rule is printed in it. The burden of proof shall
6 then be on the agency in any proceeding for judicial review or
7 for enforcement of the rule heard subsequent to the filing to
8 establish that the rule or portion of the rule ~~timely~~ objected
9 to according to the above procedure is not unreasonable,
10 arbitrary, capricious, or otherwise beyond the authority
11 delegated to it.

12 **b.** If the agency fails to meet the burden of proof
13 prescribed for a rule objected to according to the provisions
14 of paragraph "a", the court shall declare the rule or portion
15 of the rule objected to invalid and judgment shall be rendered
16 against the agency for court costs. Such court costs shall
17 include a reasonable attorney fee and shall be payable by the
18 director of the department of administrative services from the
19 support appropriations of the agency which ~~issued~~ adopted the
20 rule in question.

21 Sec. 3. Section 17A.4, subsection 7, Code 2020, is amended
22 by striking the subsection.

23 Sec. 4. Section 17A.5, subsection 2, paragraph b,
24 subparagraph (2), Code 2020, is amended to read as follows:

25 (2) In any subsequent action contesting the effective date
26 of a rule ~~promulgated~~ adopted under this paragraph "b", the
27 burden of proof shall be on the agency to justify its finding.
28 The agency's finding and a brief statement of the reasons
29 therefor shall be filed with and made a part of the rule. Prior
30 to indexing and publication, the agency shall make reasonable
31 efforts to make known to the persons who may be affected by it a
32 rule made effective under the terms of this paragraph "b".

33 Sec. 5. Section 17A.6, Code 2020, is amended by adding the
34 following new subsection:

35 NEW SUBSECTION. 3. In lieu of the procedures established in

1 subsection 2, an agency may establish alternative procedures
2 providing for public access to an electronic or printed copy of
3 a publication containing standards adopted by reference if the
4 publication is proprietary or contains proprietary information.

5 Sec. 6. Section 17A.6A, subsection 2, paragraph c, Code
6 2020, is amended to read as follows:

7 c. Process forms and instructions for filing a petition
8 for rulemaking pursuant to [section 17A.7](#), a petition for a
9 declaratory order pursuant to [section 17A.9](#), or a petition for
10 a waiver ~~or variance~~ of an administrative rule pursuant to
11 section 17A.9A.

12 Sec. 7. Section 17A.7, subsection 1, Code 2020, is amended
13 to read as follows:

14 1. An interested person may petition an agency requesting
15 the adoption, amendment, or repeal of a rule. Each agency
16 shall prescribe by rule the form for petitions and the
17 procedure for their submission, consideration, and disposition.
18 Within sixty days after submission of a petition, the agency
19 either shall deny the petition in writing on the merits,
20 stating its reasons for the denial, or initiate rulemaking
21 proceedings in accordance with [section 17A.4](#), or ~~issue~~ adopt a
22 rule if it is not required to be ~~issued~~ filed according to the
23 procedures of [section 17A.4, subsection 1](#). The agency shall
24 submit the petition and the disposition of the petition to the
25 administrative rules review committee.

26 Sec. 8. Section 17A.8, subsections 2, 5, and 9, Code 2020,
27 are amended to read as follows:

28 2. A committee member shall be appointed ~~prior to~~ as of
29 the adjournment convening of a regular session convened in an
30 odd-numbered year. The term of office for a member of the
31 house of representatives ~~shall be for four years beginning May~~
32 ~~± end upon the convening of the year of appointment general~~
33 assembly following the appointment. The term of office
34 for a member of the senate shall end upon the convening of
35 the general assembly after the general assembly following

1 appointment. However, a member shall serve until a successor
 2 is appointed. A vacancy on the committee shall be filled
 3 by the original appointing authority for the remainder of
 4 the term. A vacancy shall exist whenever a committee member
 5 ceases to be a member of the house from which the member was
 6 appointed.

7 5. A regular committee meeting shall be held at the seat
 8 of government on the second Tuesday of each month or on
 9 an alternative date established by the committee. Unless
 10 impracticable, in advance of each such meeting the subject
 11 matter to be considered shall be published in the Iowa
 12 administrative bulletin. A special committee meeting may be
 13 called by the chairperson at any place in the state and at
 14 any time. Unless impracticable, in advance of each special
 15 meeting notice of the time and place of such meeting and the
 16 subject matter to be considered shall be published in the Iowa
 17 administrative bulletin.

18 9. a. Upon a vote of two-thirds of its members, the
 19 administrative rules review committee may delay the effective
 20 date of a rule or portion of a rule until the adjournment
 21 of the next regular session of the general assembly, unless
 22 the rule was ~~promulgated~~ adopted under section 17A.5,
 23 subsection 2, paragraph "b". If the rule was ~~promulgated~~
 24 adopted under [section 17A.5, subsection 2](#), paragraph "b", the
 25 administrative rules review committee, within thirty-five days
 26 of the ~~effective date~~ publication of the rule in the Iowa
 27 administrative bulletin and upon the vote of two-thirds of its
 28 members, may suspend the applicability of the rule or portion
 29 of the rule until the adjournment of the next regular session
 30 of the general assembly.

31 b. The committee shall refer a rule or portion of a rule
 32 whose effective date has been delayed or applicability has
 33 been suspended to the speaker of the house of representatives
 34 and the president of the senate who shall refer the delayed
 35 or suspended rule or portion of the rule to the appropriate

1 standing committees of the general assembly. A standing
 2 committee shall review the rule within twenty-one days after
 3 the rule is referred to the committee by the speaker of the
 4 house of representatives or the president of the senate and
 5 shall take formal committee action by sponsoring a joint
 6 resolution to ~~disapprove~~ nullify the rule, by proposing
 7 legislation relating to the rule, or by refusing to propose
 8 a joint resolution or legislation concerning the rule. The
 9 standing committee shall inform the administrative rules review
 10 committee of the committee action taken concerning the rule.
 11 If the general assembly has not ~~disapproved of~~ nullified the
 12 rule by a joint resolution, the rule shall become effective
 13 upon the adjournment of the session of the general assembly.
 14 The speaker of the house of representatives and the president
 15 of the senate shall notify the administrative code editor of
 16 the final disposition of each rule or portion of a rule whose
 17 effective date has been delayed or whose applicability has
 18 been suspended pursuant to [this subsection](#). ~~If the rule is~~
 19 ~~disapproved, the rule shall not be effective and the agency~~
 20 ~~shall rescind the rule.~~

21 Sec. 9. Section 17A.8, Code 2020, is amended by adding the
 22 following new subsection:

23 NEW SUBSECTION. 10. *a.* Upon the vote of two-thirds of
 24 its members, the administrative rules review committee may
 25 delay the effective date of a rule or portion of a rule seventy
 26 days beyond that permitted in section 17A.5, unless the rule
 27 was adopted under section 17A.5, subsection 2, paragraph "b".
 28 If the rule was adopted under section 17A.5, subsection 2,
 29 paragraph "b", the administrative rules review committee,
 30 within thirty-five days of the publication of the rule in the
 31 Iowa administrative bulletin and upon the vote of two-thirds
 32 of its members, may suspend the applicability of the rule or
 33 portion of the rule for seventy days.

34 *b.* Notice of an effective date that was delayed under this
 35 provision shall be published in the Iowa administrative code

1 and bulletin.

2 Sec. 10. Section 17A.9A, Code 2020, is amended to read as
3 follows:

4 **17A.9A Waivers and ~~variances~~.**

5 1. Any person may petition an agency for a waiver ~~or~~
6 ~~variance~~ from the requirements of a rule, pursuant to the
7 requirements of **this section**, if the agency has established
8 by rule an application, evaluation, and issuance procedure
9 permitting waivers ~~and variances~~. An agency shall not grant a
10 petition for waiver ~~or a variance~~ of a rule unless the agency
11 has jurisdiction over the rule and the waiver ~~or variance~~
12 is consistent with any applicable statute, constitutional
13 provision, or other provision of law. In addition, this
14 section does not authorize an agency to waive ~~or vary~~ any
15 requirement created or duty imposed by statute.

16 2. Upon petition of a person, an agency may in its sole
17 discretion issue a waiver ~~or variance~~ from the requirements
18 of a rule if the agency finds, based on clear and convincing
19 evidence, all of the following:

20 a. The application of the rule would pose an undue hardship
21 on the person for whom the waiver ~~or variance~~ is requested.

22 b. The waiver ~~or variance~~ from the requirements of a rule
23 in the specific case would not prejudice the substantial legal
24 rights of any person.

25 c. The provisions of a rule subject to a petition for a
26 waiver ~~or variance~~ are not specifically mandated by statute or
27 another provision of law.

28 d. Substantially equal protection of public health,
29 safety, and welfare will be afforded by a means other than
30 that prescribed in the particular rule for which the waiver ~~or~~
31 ~~variance~~ is requested.

32 3. The burden of persuasion rests with the person who
33 petitions an agency for the waiver ~~or variance~~ of a rule. Each
34 petition for a waiver ~~or variance~~ shall be evaluated by the
35 agency based on the unique, individual circumstances set out

1 in the petition. A waiver ~~or variance~~, if granted, shall be
 2 drafted by the agency so as to provide the narrowest exception
 3 possible to the provisions of the rule. The agency may
 4 place any condition on a waiver ~~or a variance~~ that the agency
 5 finds desirable to protect the public health, safety, and
 6 welfare. A waiver ~~or variance~~ shall not be permanent, unless
 7 the petitioner can show that a temporary waiver ~~or variance~~
 8 would be impracticable. If a temporary waiver ~~or variance~~ is
 9 granted, there is no automatic right to renewal. At the sole
 10 discretion of the agency, a waiver ~~or variance~~ may be renewed
 11 if the agency finds all of the factors set out in [subsection 2](#)
 12 remain valid.

13 4. A grant or denial of a waiver ~~or variance~~ petition shall
 14 be indexed, filed, and available for public inspection as
 15 provided in [section 17A.3](#). The administrative code editor and
 16 the administrative rules coordinator shall devise ~~a mechanism~~
 17 an internet site to identify rules for which a petition for a
 18 waiver ~~or variance~~ has been granted or denied and make this
 19 information available to the public. When an agency grants a
 20 waiver, the agency shall submit the information required by
 21 this subsection on the internet site within sixty days. The
 22 internet site

23 5. ~~Semiannually, each agency which permits the granting~~
 24 ~~of petitions for waivers or variances shall prepare a report~~
 25 ~~of these actions identifying~~ identify the rules for which a
 26 waiver ~~or variance~~ has been granted or denied, the number of
 27 times a waiver ~~or variance~~ was granted or denied for each rule,
 28 a citation to the statutory provisions implemented by these
 29 rules, and a general summary of the reasons justifying the
 30 agencies' actions on the waiver ~~or variance~~ request. To the
 31 extent practicable, ~~this report~~ the agency shall detail include
 32 information detailing the extent to which the granting of a
 33 waiver ~~or variance~~ has established a precedent for additional
 34 waivers ~~or variances~~ and the extent to which the granting of
 35 a waiver ~~or variance~~ has affected the general applicability

1 of the rule itself. ~~Copies of this report shall be provided~~
2 ~~semiannually to the administrative rules coordinator and the~~
3 ~~administrative rules review committee.~~

4 ~~6.~~ 5. For purposes of **this section**, "a *waiver or variance*"
5 means an agency action which suspends in whole or in part
6 the requirements or provisions of a rule as applied to an
7 identified person on the basis of the particular circumstances
8 of that person.

9 Sec. 11. Section 17A.22, Code 2020, is amended to read as
10 follows:

11 **17A.22 Agency authority to implement chapter.**

12 Agencies shall have all the authority necessary to comply
13 with the requirements of **this chapter** through the ~~issuance~~
14 adoption of rules or otherwise.

15 Sec. 12. TRANSITION PROVISIONS — MEMBERSHIP OF
16 ADMINISTRATIVE RULES REVIEW COMMITTEE. Notwithstanding section
17 17A.8, subsection 2, as amended by this Act, the terms of
18 members of the administrative rules review committee as of the
19 effective date of this Act shall continue until the convening
20 of the 2021 regular session of the general assembly.

21 EXPLANATION

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

24 This bill relates to the administrative rulemaking process
25 under Code chapter 17A, the Iowa administrative procedure Act.

26 The bill allows the administrative code editor to update the
27 address, telephone number, facsimile number, or electronic mail
28 address of an agency, officer, or other entity when preparing
29 the copy for an edition of the Iowa administrative code or Iowa
30 administrative bulletin.

31 The bill provides that all rule filings that necessitate
32 additional annual expenditures of at least \$100,000 or
33 combined expenditures of at least \$500,000 within five years
34 by all affected persons, including the agency itself, shall
35 be accompanied by a fiscal impact statement outlining the

1 expenditures, which is then analyzed by the legislative
2 services agency. Current law provides that only notices of
3 intended action and rules filed without notice are subject to
4 this requirement.

5 The bill authorizes an agency to establish alternative
6 procedures for providing public access to an electronic or
7 printed copy of a publication containing standards adopted by
8 reference in rulemaking if the publication is proprietary or
9 contains proprietary information. Current statutory procedures
10 provide for publication on the general assembly's internet site
11 or depositing a printed copy in the state law library.

12 The bill requires agencies to submit petitions for
13 rulemaking and the disposition of such petitions to the
14 administrative rules review committee (ARRC).

15 The bill modifies the terms of office of ARRC members
16 by providing that terms for members of the house of
17 representatives commence at the convening of a regular session
18 convened in an odd-numbered year and end at the convening of
19 the following general assembly. Terms for members of the
20 senate commence at the convening of a regular session convened
21 in an odd-numbered year and end at the convening of the general
22 assembly after the following general assembly. Under current
23 law terms of office for all members last four years commencing
24 on May 1 with appointments made prior to the adjournment of a
25 regular session convened in an odd-numbered year. The bill
26 provides that current terms of ARRC members continue until the
27 convening of the 2021 regular session of the general assembly.

28 The bill provides that the ARRC may establish an alternative
29 date for its regular monthly meeting.

30 The bill authorizes the ARRC to suspend the applicability
31 of emergency rules filed using the procedure provided in Code
32 section 17A.5, subsection 2, paragraph "b", subparagraph 1,
33 within 35 days of the publication of the rule in the Iowa
34 administrative bulletin. Under current law, the ARRC may do so
35 within 35 days of the rule's effective date.

1 The bill revises language on procedures relating to delays
2 of effective dates of rules and suspension of applicability of
3 rules by the ARRC until the adjournment of the next regular
4 session of the general assembly by replacing references to
5 joint resolutions disapproving of rules with references to
6 nullification of rules.

7 The bill transfers language authorizing the delay of
8 effective dates of rules and suspension of applicability of
9 rules by the ARRC for 70 days from Code section 17A.4 to Code
10 section 17A.8.

11 The bill modifies requirements for waiver or variance of
12 rules by agencies by striking references to variances. The
13 bill strikes a requirement that agencies submit semiannual
14 reports on waivers of rules to the administrative rules
15 coordinator and the administrative rules review committee. The
16 bill requires that agencies submit information regarding a
17 waiver on an internet site devised by the administrative rules
18 coordinator within 60 days of granting or denying the waiver.

19 The bill standardizes terminology referring to adoption of
20 rules throughout Code chapter 17A.