

FILED JAN 27 2005

SENATE FILE 86  
BY MCKINLEY

STATE GOVERNMENT

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for negotiated rulemaking.

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

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

SF 86  
STATE GOVERNMENT

1 Section 1. NEW SECTION. 17A.4B NEGOTIATED RULEMAKING.

2 1. An agency shall create a negotiated rulemaking group if  
3 required by statute. An agency may, on its own motion or upon  
4 request, create a negotiated rulemaking group if the agency  
5 determines that a negotiated rulemaking group can adequately  
6 represent the interests that will be significantly affected by  
7 a proposed rule and that it is feasible and appropriate in the  
8 particular rulemaking. Notice of the creation of a negotiated  
9 rulemaking group shall be published in the Iowa administrative  
10 bulletin. Upon establishing a negotiated rulemaking group,  
11 the agency shall also specify a time frame for group  
12 deliberations.

13 2. Unless otherwise provided by statute, the agency shall  
14 appoint a sufficient number of members to the group so that a  
15 fair cross section of opinions and interests regarding the  
16 proposed rule is represented. One person shall be appointed  
17 to represent the agency. The group shall select its own  
18 chairperson and adopt its rules of procedure. All meetings of  
19 the group shall be open to the public. A majority of the  
20 membership constitutes a quorum. Members shall not receive  
21 any per diem payment but shall be reimbursed for all necessary  
22 expenses. Any vacancy shall be filled in the same manner as  
23 the initial appointment.

24 3. Prior to the publication of a notice of intended  
25 action, the group shall consider the terms or substance of the  
26 rule proposed by the agency and shall attempt to reach a  
27 consensus concerning the proposed rule.

28 4. If a group reaches a consensus on a proposed rule, the  
29 group shall transmit to the agency a report containing the  
30 consensus on the proposed rule. If the group does not reach a  
31 consensus on a proposed rule within the specified time frame,  
32 the group shall transmit to the agency a report stating that  
33 inability to reach a consensus and specifying any areas in  
34 which the group reached a consensus. The group may include in  
35 a report any other information, recommendations, or materials

1 that the group considers appropriate. Any group member may  
2 include as an addendum to the report additional information,  
3 recommendations, or materials. A report issued under this  
4 subsection shall not be considered final agency action for  
5 purposes of judicial review.

6 5. Unless otherwise provided by statute, following a  
7 negotiated rulemaking group consideration of a proposed rule,  
8 the agency may commence rulemaking as provided in section  
9 17A.4. The group is automatically abolished upon the agency's  
10 adoption of the rule pursuant to the provisions of section  
11 17A.5.

12 EXPLANATION

13 If required by statute, this bill requires an agency to  
14 create an ad hoc group to review proposed rules prior to  
15 commencing a rulemaking proceeding. Where a statute does not  
16 require this review, the bill allows an agency to create such  
17 a review group. Members are appointed by the agency and the  
18 composition must adequately represent a fair balance of the  
19 interests affected by the rule. Once such a group is created,  
20 the agency may only commence rulemaking after the group has  
21 considered the proposed rule in question.

22 The bill is based on similar provisions found in the  
23 federal Administrative Procedures Act.

24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35