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SENATE FILE
BY MCKINLEY

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STATE GOVERNMENT

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act amending the Iowa administrative procedure Act as it
2 relates to public participation in the rulemaking process, the
3 adoption and effectiveness of administrative rules, and the
4 delegation of rulemaking authority to administrative agencies.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 95
STATE GOVERNMENT

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1 Section 1. Section 17A.4, subsection 1, paragraph b, Code
2 2005, is amended to read as follows:

3 b. Afford all interested persons not less than twenty days
4 to submit data, views, or arguments in writing. If timely
5 requested in writing by twenty-five interested persons, by a
6 governmental subdivision, by the administrative rules review
7 committee, by an agency, or by an association having not less
8 than twenty-five members, the agency must give interested
9 persons an opportunity to make oral presentation. To the
10 extent practicable, the agency shall provide an opportunity to
11 make these oral presentations using the Iowa communications
12 network or other electronic means and provide public access at
13 multiple sites throughout the state. If a request is received
14 from twenty-five interested persons residing in the same city
15 or county, the agency shall provide an opportunity for oral
16 presentation in that city or county. The opportunity for oral
17 presentation must be held at least twenty days after
18 publication of the notice of its time and place in the Iowa
19 administrative bulletin. The agency shall consider fully all
20 written and oral submissions respecting the proposed rule.
21 Within one hundred eighty days following either the notice
22 published according to the provisions of paragraph "a" or
23 within one hundred eighty days after the last date of the oral
24 presentations on the proposed rule, whichever is later, the
25 agency shall adopt a rule pursuant to the rulemaking
26 proceeding or shall terminate the proceeding by publishing
27 notice of termination in the Iowa administrative bulletin.

28 An agency shall include in a preamble to each rule it
29 adopts ~~a-brief-explanation-of-the-principal-reasons-for-its~~
30 action pursuant to section 17A.5 a concise statement of the
31 principal reasons for and against the rule adopted,
32 incorporating in the statement the reasons for overruling
33 considerations urged against the rule and, if applicable, a
34 brief explanation of the principal reasons for its failure to
35 provide in that rule for the waiver of the rule in specified

1 situations if no such waiver provision is included in the
2 rule. ~~This explanatory requirement does not apply when the~~
3 ~~agency adopts a rule that only defines the meaning of a~~
4 ~~provision of law if the agency does not possess delegated~~
5 ~~authority to bind the courts to any extent with its~~
6 ~~definition. In addition, if requested to do so by an~~
7 ~~interested person, either prior to adoption or within thirty~~
8 ~~days thereafter, the agency shall issue a concise statement of~~
9 ~~the principal reasons for and against the rule adopted,~~
10 ~~incorporating therein the reasons for overruling~~
11 ~~considerations urged against the rule. This concise statement~~
12 ~~shall be issued either at the time of the adoption of the rule~~
13 ~~or within thirty-five days after the agency receives the~~
14 ~~request.~~

15 Sec. 2. Section 17A.4, subsection 2, Code 2005, is amended
16 to read as follows:

17 2. When an agency for good cause finds that notice and
18 public participation would be unnecessary, impracticable, or
19 contrary to the public interest, the provisions of subsection
20 1 shall be inapplicable. The agency shall incorporate in each
21 rule issued in reliance upon this provision either the finding
22 and a brief statement of the reasons for the finding, or a
23 statement that the rule is within a very narrowly tailored
24 category of rules whose issuance has previously been exempted
25 from subsection 1 by a special rule relying on this provision
26 and including such a finding and statement of reasons for the
27 entire category. ~~If the administrative rules review committee~~
28 ~~by a two-thirds vote, the governor, or the attorney general~~
29 ~~files with the administrative code editor an objection to the~~
30 ~~adoption of any rule pursuant to this subsection, that rule~~
31 ~~shall cease to be effective one hundred eighty days after the~~
32 ~~date the objection was filed. A copy of the objection,~~
33 ~~properly dated, shall be forwarded to the agency at the time~~
34 ~~of filing the objection.~~ In any action contesting a rule
35 adopted pursuant to this subsection, the burden of proof shall

1 be on the agency to show that the procedures of subsection 1
2 were impracticable, unnecessary, or contrary to the public
3 interest and that, if a category of rules was involved, the
4 category was very narrowly tailored. A rule adopted pursuant
5 to this subsection shall remain in effect for one hundred
6 eighty days, unless a shorter period is specified in the rule.

7 Sec. 3. Section 17A.23, unnumbered paragraph 3, Code 2005,
8 is amended to read as follows:

9 An agency shall have only that authority or discretion
10 delegated to or conferred upon the agency by law and shall not
11 expand or enlarge its authority or discretion beyond the
12 powers delegated to or conferred upon the agency. Unless
13 otherwise specifically provided in statute, any grant of
14 rulemaking authority shall be construed narrowly.

15 EXPLANATION

16 This bill makes a number of changes to the rulemaking
17 process.

18 The bill requires administrative agencies, when feasible,
19 to hold rulemaking hearings in varied locations throughout the
20 state via the Iowa communications network and provides that a
21 hearing must be held in a particular city or county when 25
22 interested persons from that city or county make the request.

23 Every adopted rule must be accompanied by a concise
24 statement of the principal reasons for and against the rule
25 adopted; under current law such a statement is only provided
26 on request.

27 The bill also provides that so-called "emergency" rules are
28 in effect for only 180 days.

29 The bill also establishes a new rule of statutory
30 construction: Unless otherwise specifically provided in
31 statute, any grant of rulemaking authority shall be construed
32 narrowly.

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