



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 559 (Substitute S-1 as reported)
Sponsor: Senator Wayne Kuipers
Committee: Government Operations and Reform

Date Completed: 6-28-07

RATIONALE

Some people are concerned that the process by which State agencies promulgate rules does not provide for enough legislative oversight, and that the result might be regulation that is unnecessarily costly. In order to address these concerns, it has been suggested that an agency be required to submit a detailed cost-benefit analysis with a request for rule-making, which must be filed before an agency initiates any rule changes or additions. (For more information on the rule-making process under the Administrative Procedures Act, please see **BACKGROUND**, below.)

CONTENT

The bill would amend the Administrative Procedures Act to require an agency's request for rule-making to include a cost-benefit analysis.

Under the Act, before initiating any changes or additions to rules, an agency must electronically file a request for rule-making with the State Office of Administrative Hearings and Rules. The request for rule-making must include the following:

- The State or Federal statutory or regulatory basis for the rule.
- The problem the rule intends to address.
- An assessment of the significance of the problem.

The bill would require a request for rule-making also to include a cost-benefit analysis regarding any new rule or changes to an existing rule. The analysis would have to include the following:

- An identification of the businesses, groups, or individuals who would be affected directly by, bear the cost of, or benefit directly from the rule.
- An estimate of the cost of rule imposition on the agency promulgating the rule.
- An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.
- An estimate of the primary and direct benefits of the rule.
- An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.
- An estimate of any increase in revenue to State or local governmental units as a result of the rule.
- An estimate of any secondary or indirect benefits of the rule.

MCL 24.239

BACKGROUND

The rule promulgation process is governed by the Administrative Procedures Act. The following description of the process is largely derived from a website of the Department of Labor and Economic Growth, which houses the State Office of Administrative Hearings and Rules (SOAHR).

Filing a request for rule-making (RFR) is the first step in the formal rule promulgation process. When an agency files a request, SOAHR may approve or deny it, or ask for additional information. If the RFR is approved, the agency may begin drafting the text of the proposed rule. The proposed rule then is presented to the Legislative

Service Bureau (LSB) and SOAHR for informal review.

The LSB completes a preliminary review of the form, classification, and arrangement of the proposed rule and grants informal approval when appropriate modifications have been made to the text; SOAHR completes a preliminary assessment of the legal authority underlying the proposed rule, examines the rule to determine whether it is consistent with the intent of the RFR, and grants informal approval when any legal issues have been resolved.

Following preliminary approval of the draft rule language, the agency must complete a regulatory impact statement, assessing the rule's economic impact. The regulatory impact statement includes general information on the proposed rule; an assessment of the costs to governmental units, regulated individuals, and businesses; and a description of the expected benefits of the rule. The regulatory impact statement must be filed with SOAHR at least 28 days before a public hearing.

The agency must submit the proposed rule for review at a public hearing. Individuals are given an opportunity to present data, views, questions, and arguments concerning the rule. After the agency assesses comments received at the hearing and prepares a hearing report, the LSB must formally review the proposed rule to ensure its proper form, classification, and arrangement. The rule then is sent to SOAHR for certification that it falls within the agency's statutory authority, does not violate constitutional rights, and was promulgated in compliance with the Administrative Procedures Act.

Following certification, the proposed rule is forwarded to the Legislature's Joint Committee on Administrative Rules (JCAR), which may object to the rule on grounds listed in the Act. If JCAR files a notice of objection, bills must be introduced in both houses of the Legislature to rescind the rule upon its effective date, repeal the statutory provision under which the rule was promulgated, or stay the rule's effective date for up to one year. If the legislation is not enacted within the specified time period, or if JCAR did not file a notice of objection, SOAHR may file the rule with the Secretary of State's Office of the Great Seal. The rule

then will take effect unless it indicates a different effective date.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although State laws are enacted by the Legislature, the details of implementation often are determined by the applicable State agency through the promulgation of rules. By requiring a State agency to include in its rule-making request a comprehensive cost-benefit analysis, the bill would provide JCAR and the Legislature as a whole with more information to help determine whether the benefit of a proposed rule would be worth the costs incurred by businesses, individuals, and government.

Much of the information the bill would require already must be included in the regulatory impact statement. The provision of this information at the beginning of the rule-making process, before a rule has actually been drafted, would be helpful to those who must review proposed rules and to the public.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would increase the cost to State agencies proposing new or revised administrative rules by an unknown amount. The proposed cost-benefit analysis would come earlier in the rule-making process than, and be in addition to, the currently required regulatory impact statement, which must be submitted after the request for rule-making is filed and before a public hearing is held. The Act requires that the regulatory impact statement include statements of the costs and benefits of the proposed rule, addressing specifically the estimated cost of compliance with the proposed rule on individuals, businesses, and other groups, an estimate of costs that would be borne disproportionately by small businesses, the estimated cost of State administration of the proposed rule, and estimates of the direct and indirect benefits of the proposed rule.

Under the bill, the proposed requirement for an additional detailed cost-benefit analysis would apply in some situations that are currently exempt from the requirement to submit a regulatory impact statement, such as the promulgation of temporary emergency rules related to public health and safety, correction of errors in rules, and rules promulgated under the Michigan Occupational Safety and Health Act that adopt an existing Federal standard.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.