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BILL ANALYSIS

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Senate Bill 559 (as introduced 5-31-07)
Sponsor: Senator Wayne Kuipers
Committee: Government Operations and Reform

Date Completed: 6-26-07

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 the following:

- The State or Federal statutory or regulatory basis for the rules.
- 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 rules or changes to existing rules.

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.

Legislative Analyst: Suzanne Lowe

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 the 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 a 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.