



**House
Legislative
Analysis
Section**

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ADMN. RULES: HEARING NOTICES

House Bill 5058 with committee amendments
First Analysis (10-4-89)

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Sponsor: Rep. Gary L. Randall
Committee: House Oversight

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THE APPARENT PROBLEM:

Reportedly, the public notification requirements of the Administrative Procedures Act have resulted in some confusion as to what constitutes proper notification, as well as resulting in placing the Joint Committee on Administrative Rules in the position of having to take action on a proposed rule even in cases where notification of public hearings on the rule has not been completely carried out.

The Administrative Procedures Act contains two sections (sections 41 and 42) which deal with public notice requirements that apply to state agencies proposing to adopt administrative rules. One section (section 41) requires that, before adopting a proposed rule, a state agency give notice of public hearings on the proposed rule and requires certain time limits for such notification to be given. However, the section does not specify how such notice be given, though it does have provisions concerning what the notice must contain, to whom copies of the notice be given, and who must be at the hearing. The second section (section 42) leaves it up to the discretion of the state agency to decide the best way to notify people likely to be affected by the proposed rule, should there be no applicable law prescribing how the notice of the public hearing is to be published. The section allows state agencies ("depending on circumstances") to use a number of methods to notify people of public hearings on proposed rules, including publication of the notice in one or more newspapers of general circulation or in trade, industry, governmental, or professional publications. The section also specifies that if the people likely to be affected by the proposed rule are "unorganized or diffuse in character and location," the agency must publish the notice as a display advertisement in at least three newspapers in general circulation in different parts of the state, with one of the papers being published in the Upper Peninsula.

Reportedly, state agencies sometimes have interpreted the notification requirements of these two sections of the Administrative Procedures Act as allowing them to choose one or the other in order to fulfill the agency's public notification requirements, rather than interpreting the act as requiring the agency to fulfill the requirements of both sections. As a result, sometimes agencies have proposed rules and believed that they had given the required notice of public hearing, without yet having published the notice in more than one newspaper, or in more than one newspaper but not in a newspaper in the Upper Peninsula, or not within the required time limits.

The act presently also requires the Joint Committee on Administrative Rules to act on a rule sent to it by a state agency (after the Legislative Service Bureau and the attorney general have approved the rule and it has been published in the Michigan Register). However, there is no requirement that proper notification of a public hearing be given before the committee may be required to consider a

rule, and the committee has occasionally been required to take action on a proposed rule even though all of the notification requirements of the act have not been met.

Legislation has been introduced to clarify the act's notification requirements.

THE CONTENT OF THE BILL:

The bill would amend the Administrative Procedures Act to strike provisions allowing state agencies to decide on the best way to notify people likely to be affected by a proposed rule and instead would require that, if no existing law applied, a state agency would be required to publish a notice of public hearings on a proposed rule (a) not less than ten days (instead of the present minimum of 30 days) and not more than 60 days (instead of the present 90 days) before the hearing, and (b) do so in at least three newspapers of general circulation in different parts of the state, one of which would have to be in the Upper Peninsula. The requirement that the notice be a display advertisement would be deleted.

In addition, the bill would require that the Joint Committee on Administrative Rules take action on a proposed rule transmitted to it by a state agency only after publication of the rule in the Michigan Register and after notice was given as required.

Finally, the bill would require the House and Senate fiscal agencies to analyze each proposed rule for possible fiscal implications (instead of doing so only upon request of the Joint Committee on Administrative Rules).

MCL 24.241 et al.

FISCAL IMPLICATIONS:

Legal counsel for the Joint Committee on Administrative Rules notes that there may be some savings to state agencies, since the bill would strike the requirement that newspaper notices be in the form of display advertisements (which are more expensive than the notices that would be allowed under the bill). (10-3-89)

ARGUMENTS:

For:

Having public notification requirements in two different sections of the Administrative Procedures Act is confusing and has resulted in state agencies occasionally failing to publish notification of public hearings on proposed rules in the right (or the right number of) newspapers or within the required time limits. When this has happened (but when all of the other required steps have been taken as required by the act), the Joint Committee on Administrative Rules also then has occasionally wound up taking action on a proposed rule even though notification of public hearings on the rule was not properly carried out. The bill would clear up this confusion, making clear that proper notification would involve publication in newspapers across

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the state (including one in the UP) and that the committee could not even consider a proposed rule unless such notification had (in addition to the other requirements) been given. In addition, striking the requirement that the newspaper notices be "display advertisements" would save state agencies money, since this kind of notice is more expensive than other kinds of notices. Also, requiring the legislative fiscal agencies to do fiscal analyses of all proposed rules, rather than upon request of the Joint Committee on Administrative Rules, would reflect actual practice, since the agencies presently automatically do analyses of all proposed rules. Finally, changing the notification time limits would return the minimum limit to what it was before the creation of the Michigan Register (which comes out every 30 days and which is why the ten day limit was changed to coincide with this schedule) and would allow a more reasonable upper limit of 60 (rather than 90) days.

POSITIONS:

No positions are available. (10-3-89)