

Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
 and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	State Tenure Commission
Division/Bureau/Office:	Department of Education Office of Administrative Law
Name, title, phone number, and e-mail of person completing this form:	Robert Taylor Administrative Law Specialist 517-241-6986 TaylorB1@michigan.gov
Name of Departmental Regulatory Affairs Officer reviewing this form:	Mary Fielding

2. Rule Set Information

ORR assigned rule set number:	2018-053 ED
Title of proposed rule set:	Teacher Tenure General Rules

PART 2: KEY SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

MCL 24.232 (8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.

(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall

consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
- (3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
- (a) 0-9 full-time employees.
 - (b) 10-49 full-time employees.
 - (c) 50-249 full-time employees.
- (4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
- (5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

A. Are these rule(s) required by state law or federal mandate?

These proposed rules, which govern the conduct of teacher tenure administrative hearings and declaratory ruling procedures, are required by section 4 of article IV, section 1 of article VI, and section 10 of article VII of the teachers’ tenure act, 1937 (Ex. Sess.) PA 4, MCL 38.104, MCL 38.121, and MCL 38.140, and section 63 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.263. The proposed rules are not required by federal mandate.

- B.** If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

There is no relevant federal standard.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The teachers' tenure act (MCL 38.71 to 38.191) is unique to Michigan. It sets forth procedures that apply to Michigan tenured teachers who challenge the actions of local school boards in Michigan. The proposed rules concern those procedures, which cannot be readily compared to the standards of other states.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

The rules are required by, and do not exceed the protections set forth in, Michigan law. There are no relevant standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

There are no laws, rules, or other legal requirements that duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

There are no federal, state, or local laws that apply to the same activity or subject matter as the proposed rules.

4. If MCL 24.232(8) applies and the proposed rule(s) is more stringent than the applicable federally mandated standard, **a statement of specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rule(s) is more stringent than the applicable federal standard, **either the statute that specifically authorizes the more stringent rule(s) or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule(s) and an explanation of the exceptional circumstances that necessitate the more stringent standard** is required below:

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s):

6. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

The proposed rules are designed to prescribe procedures for appeals by tenured teachers in accordance with the streamlined procedures required by the teachers' tenure act. Among other things, the rules prescribe how a tenured teacher perfects an appeal to the State Tenure Commission. A primary purpose of the proposed rules is to ease the procedural burden on tenured teachers and school districts. The proposed rules expand electronic filing options and eliminate the requirement that parties file multiple copies of some pleadings.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

No change in the frequency of tenure appeals is expected from the proposed rules. It is expected that the use of electronic filing will increase.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed rules will simplify the process for tenured teachers to perfect appeals to the State Tenure Commission. For example, the proposed rules will make it easier for a tenured teacher to serve a claim of appeal on a controlling board by allowing service by regular first class mail, in

contrast to the current requirement of service by certified mail (return receipt requested). For both teachers and school districts, the proposed rules will eliminate the burden of having to file multiple copies of certain pleadings.

C. What is the desired outcome?

The desired outcome is an easing of the burden on teachers to perfect appeals to the State Tenure Commission, to expand electronic filing options for teachers and school districts, and to ease the burden on teachers and school districts related to the number of copies of pleadings that must be filed with the State Tenure Commission.

7. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The current rules are confusing and impose undue burdens on teachers who challenge the discharge and demotion decisions of local school boards. The current rules also impose undue burden on teachers and school districts by requiring them to file multiple copies of certain pleadings with the State Tenure Commission.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

In general, the rules are proposed to be amended so as to streamline the appeal process; to ease the burden on teachers who challenge local school boards' discharge and demotion decisions; to eliminate confusing parts of the current rules; to reorganize the rules to make them more user-friendly; to decrease procedural burdens on teachers and school districts related to the number of copies of pleadings they must file and related to electronic filing options; to move some information from the rules to readily-available, easily-understood online documents; and to rescind unnecessary rules.

8. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules implement the teachers' tenure act. A primary purpose of the act is to ensure that Michigan classrooms are staffed with effective teachers who conduct themselves in accordance with professional and ethical standards in the best interests of schoolchildren.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

Rule 38.139 is being rescinded because it is an obsolete and unnecessary "rescission rule," a type of rule that does not align with current standards of rule drafting. Rule 38.144 is being rescinded as unnecessary because its content, as amended, is being incorporated in proposed Rule 38.143. Rule 38.163 and Rule 38.165 are being rescinded as unnecessary because their essential content, as amended, is being incorporated in proposed Rule 38.161. Rule 38.171 is being rescinded as unnecessary because its content is contained in section 4(2) of article IV of the teachers' tenure act, MCL 38.104.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

10. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

With the exception of reducing the need for space for storage of tenure pleadings (due to the reduction of the need to file multiple copies of certain pleadings and the elimination of requirements to file some

documents), there will be no fiscal impact on the State Tenure Commission or on the Department of Education as a result of the proposed rules.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

There will be no expenditures associated with the proposed rules. Therefore, no agency appropriation or funding source is required.

12. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules place no added burden on individuals. Rather, the proposed rules may ease the financial burden of perfecting an appeal to the State Tenure Commission by relaxing the service requirements related to a claim of appeal, by expanding electronic filing options, and by eliminating the requirement that parties file multiple copies of certain pleadings.

- A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

There are no additional burdens imposed by the proposed rules.

Impact on Other State or Local Governmental Units:

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

No increase or decrease in revenues to state or local governmental units is anticipated as a result of the proposed rules.

- A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules will result in undetermined cost savings to local school districts and to the Department of Education due to the removal of the requirement that parties in teacher tenure appeals file multiple copies of certain pleadings and due to the expansion of electronic filing options.

14. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

The proposed rules do not impact cities, counties, towns, or villages. The proposed rules do not impose any additional programs, services, duties, or responsibilities on school districts.

- A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require that any governmental units take any additional actions.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

There will be no additional expenditures associated with the proposed rules. Therefore, no agency appropriation or funding source is required.

Rural Impact:

16. In general, what impact will the rule(s) have on rural areas?

The proposed rules apply equally to appeals and requests for declaratory rulings involving all school districts in Michigan. They will have no distinct impact on rural areas except perhaps to ease the burden of service of a claim of appeal for persons who do not have ready access to postal facilities that offer certified mail services.

A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed rules apply equally to cases involving urban, suburban, and rural school districts in Michigan.

Environmental Impact:

17. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The proposed rules will positively impact the environment by reducing paperwork, i.e., by eliminating the requirement that parties file multiple copies of certain pleadings with the State Tenure Commission. In addition, the proposed rules will positively impact the environment by eliminating the requirement to file a notice of claim of appeal and the requirement for an unrepresented party to file an appearance. The expansion of electronic filing options will also positively impact the environment.

Small Business Impact Statement:

18. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The proposed rules affect teachers and school districts, not small businesses.

19. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not have an economic impact on small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

The proposed rules do not affect small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not impose any requirements on small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules do not impose any requirements on small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The proposed rules do not establish performance standards or have any impact on small businesses.

20. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rules do not affect small businesses, regardless of their size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The proposed rules do not impose any requirements on, or otherwise affect, small businesses.

22. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules do not impose any requirements on, or otherwise affect, small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

The proposed rules do not impose any requirements on, or otherwise affect, small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The proposed rules do not impose any requirements on, or otherwise affect, small businesses.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules do not concern or affect small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not concern or affect small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

Small businesses were not involved in the development of the proposed rules.

- A. If small businesses were involved in the development of the rule(s), please identify the business(es).

Small businesses were not involved in the development of the proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact):

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The proposed rules affect teachers and school districts. There will be no statewide compliance costs of the proposed amendments.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

Teachers and school districts will be directly affected by and will directly benefit from the proposed rules.

- B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules will impose no additional costs on any groups.

29. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The proposed rules will not impose any additional compliance costs on regulated individuals or the public.

A. How many and what category of individuals will be affected by the rules?

Tenured teachers will be affected by the proposed rules but they will be subject to no additional costs or burdens.

B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Teachers may experience cost savings related to the removal of the requirement that they file multiple copies of certain pleadings and the removal of the requirements that they file notices of claims of appeal and, if unrepresented, appearances. In addition, the removal of the requirement that, if served by mail, a claim of appeal must be mailed by certified mail (return receipt requested) will ease the burden on appealing teachers. The expansion of electronic filing options will also ease the burden on these individuals.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Both individual teachers and school districts will experience undetermined cost savings due to the easing of requirements related to the number of copies of certain pleadings that must be filed with the State Tenure Commission. Expansion of electronic filing opportunities will also result in undetermined cost savings to individual teachers and school districts.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules will reduce filing requirements, thus resulting in undetermined cost savings to individual teachers and school districts.

32. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth and job creation or elimination in Michigan.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

School districts and teachers will be affected by the proposed rules.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

It was not necessary to consult outside sources to prepare this regulatory impact statement, which is based on the experience and expertise of the State Tenure Commission and the Department of Education Office of Administrative Law.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The need for the proposed rules was determined based on the experience and expertise of the State Tenure Commission and the Department of Education Office of Administrative Law, which are cognizant of the burdensome nature and impact of requiring multiple copies of pleadings, requiring unnecessary pleadings, and imposing overly restrictive requirements related to service of claims of appeal.

Alternatives to Regulation:

35. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the proposed rules because the proposal is to make necessary and desirable changes to existing rules that are required or authorized by statute. The changes relate solely to procedural requirements that are not typically addressed by statute.

- A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives, including statutory amendments.

36. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

Teacher tenure is a creation of statute, and rules are required to prescribe procedural requirements for seeking relief from local actions that are alleged to violate statutory tenure rights. Private sector options, if any, are set forth in collective bargaining agreement grievance procedures. Civil litigation in a court of competent jurisdiction is another option.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

No significant alternatives were considered.

Additional Information:

38. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

There are no instructions regarding the method of complying with the proposed rules.

 ↓ To be completed by the ORR ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received:	5-3-2019
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Date RISCBA approved:	5/10/19
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Date of disapproval:	
Explanation:	