



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 434 (Substitute S-1 as reported)
Sponsor: Senator Jud Gilbert, II
Committee: Economic Development and Regulatory Reform

CONTENT

The bill would amend the Administrative Procedures Act to do all of the following:

- Prohibit an agency from promulgating or adopting a rule that was more stringent than the applicable Federal standard unless specifically authorized by statute to do otherwise.
- Specify that a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions would be considered merely advisory and could not be given the force and effect of law.
- Specify that the State Office of Administrative Hearings and Rules would not be required to approve a rule-making request and could do so only after indicating that there were appropriate and necessary policy and legal bases for approving a request.
- Require an agency, if proposing a rule that would have a disproportionate impact on small businesses, to consider exempting them and, if it did not, to reduce the economic impact of the rule on small businesses by taking certain actions, including identifying the number of small businesses affected by the rule and its probable effect on them.
- Require an agency's regulatory impact statement to compare the proposed rule to standards in other Great Lakes states, and include a cost-benefit analysis of the rule.
- Allow a court to include a determination of an agency's failure to assess the impact of a rule on small businesses, when issuing a declaratory judgment that a rule or its application interferes with or impairs a plaintiff's legal rights or privileges.
- Allow a person alleging a violation regarding the processing of a rule to bring an action for an award of damages, and allow the circuit court to award up to 10 times the cost of any permit fees plus costs relating to witness and attorney fees.

MCL 24.203 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would increase the costs of State agencies that promulgate administrative rules by an unknown amount due to the additional procedural requirements that would apply to the development of administrative rules. The costs of the State Office of Administrative Hearings and Rules within the Department of Energy, Labor, and Economic Growth also would increase; however, the amount of the impact is indeterminate.

The bill would expand the potential for judgments against the State due to violations of the rule-making process. The cost of potential damages would depend on the number and types of suits brought and their final disposition.

Date Completed: 5-19-09

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