

Legislative Analysis



ADMINISTRATIVE RULES AMENDMENTS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 271 (S-1)

Sponsor: Sen. Jack Brandenburg

Senate Bill 272

Sponsor: Sen. Mike Kowall

Senate Bill 276 (S-1)

Sponsor: Sen. Dave Robertson

Senate Bill 274 (S-1)

Sponsor: Sen. John Pappageorge

Senate Bill 278 (S-1)

Sponsor: Sen. Goeff Hansen

House Committee: Regulatory Reform

Senate Committee: Economic Development

Complete to 11-1-11

A SUMMARY OF SENATE BILLS 271-72, 274, 276, & 278 AS PASSED BY THE SENATE 5-5-11

The bills would make changes to the Administrative Procedures Act to revise provisions dealing with the promulgation of administrative rules.

Senate Bill 271 (S-1) would do the following:

- Require the Office of Regulatory Reinvention to include a small business impact statement with its notice of transmittal to the Joint Committee on Administrative Rules regarding a proposed rule.
- Require a regulatory impact statement to include (1) a comparison of a proposed rule to standards in other states in the Great Lakes region and a statement of whether the rule exceeds standards in those states, (2) the methodology utilized in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule, and (3) a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule upon small businesses.
- Require an agency to post a regulatory impact statement on its website at least 10 days prior to a public hearing on a proposed rule.

MCL 24.245

Senate Bill 272 would do the following:

- Prohibit an agency from promulgating or adopting a rule more stringent than the applicable federal standard unless specifically authorized by statute.
- Require an agency to adopt federal rules if it has adopted rules to implement a federally delegated program, unless a more efficient process is authorized by statute.

- Specify a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions would be advisory in nature and could not be given the force and effect of law.
- Prohibit rules from exceeding the rule-making authority delegated its authorizing statute.
- Require agencies to consider exempting small businesses from a rule or reduce the impact on them by (1) **identifying and estimating the number of small businesses affected by the proposed rule and its probable effect on small businesses**; (2) establish differing compliance or reporting requirements for small businesses under the rule **after projecting the required reporting, record-keeping, and other administrative costs**; (3) consolidate, simplify, or eliminate the compliance and reporting requirements **and identify the skills necessary to comply with the reporting requirements**; and (4) **establish performance standards to replace design or operational standards** (new language in bold).
- Require, rather than allow, the classifications of small business contained in the act to be used when an agency is attempting to reduce the disproportionate economic impact on small businesses.
- Allow a court to award up to 10 times the cost of any permit fees and actual and reasonable costs for witness and attorney fees if the court determined a rule-processing violation has occurred.

MCL 24.232 et al.

Senate Bill 274 (S-1) would allow the Joint Committee on Administrative Rules (JCAR) to hold a hearing on any rule previously filed with the Secretary of State or on any matter it deems appropriate.

MCL 24.235 and 24.245a

Senate Bill 276 (S-1) would do the following:

- Require an agency's request for rule-making to include the decision record of an advisory committee, if applicable.
- Replace references to the State Office of Administrative Hearings and Rules (SOAHR) with the Office of Regulatory Reinvention (ORR). [Executive Orders 2011-4 and 2011-5 abolished SOAHR and transferred its rule-making authority to the ORR.]
- Specify the ORR does not have to approve a rule-making request and could only do so after it had indicated there were appropriate and necessary bases for approving the request.
- Require the ORR to issue a written or electronic response to a rule-making request that specifically addresses whether there are appropriate and necessary policy and legal bases for approving the request.
- Require the ORR to post certain information pertaining to a proposed rule on its website and to facilitate linking the information to another department or agency website.

"*Decision Record*" would mean, if an advisory committee has made recommendations or comments to an agency in regard to a rule making request, all of the following: (1) the minutes of all meetings of the advisory meeting related to the request, (2) the votes of members, and (3) a summary of the discussion and reasoning in support of the recommendations.

MCL 24.203 et al.

Senate Bill 278 (S-1) would do the following:

- Require an agency's annual regulatory plan to include all rules the agency expected to review in the next year.
- Require an agency and the appropriate standing committees of the Legislature to review each set of rules over a six year period, based on the priority contained in the bill.
- Set standards for a review of rules required under the bill.
- Rules reviews would have to state the following:
 - The continued need for the rules.
 - The nature of any complaints or comments received from the public concerning the rules.
 - The complexity of complying with the rules.
 - The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.
 - The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

MCL 24.253

FISCAL IMPACT:

Senate Bills 271 (S-1), 274 (S-1), 276 (S-1) & 278 (S-1) alter the references in 1969 PA 306 to the Office of Regulatory Reform to the Office of Regulatory Reinvention (ORR), which was created by Executive Order 2011-5. This alteration would not have a significant impact on the Department of Licensing and Regulatory Affairs (LARA) budget as it merely aligns legislative reference with EO 2011-5. The ORR was appropriated \$350,000 and 2 FTEs for FY 2011-12 to carry out the functions transferred to it via EO 2011-5.

Senate Bill 271 (S-1) would increase the administrative expenses of agencies within LARA and other state departments by an indeterminate amount. SB 271 (S-1) requires rulemaking agencies to add a comparison of proposed rules to standards in other states in the Great Lakes Region and a detailed recitation of the efforts to reduce disproportionate impacts of proposed rules on small businesses (per MCL 24.240(1) which would be amended by SB 272) to the regulatory impact statement.

Senate Bill 272 would increase the administrative expenses of agencies within LARA and other state departments by an indeterminate amount. SB 272 requires rulemaking agencies to perform additional analysis of the effect of proposed rules on small businesses.

Senate Bill 274 (S-1) would not have a significant fiscal impact on LARA's budget.

Senate Bill 276 (S-1) would increase the administrative expenses of agencies with LARA and other state departments by an indeterminate amount. SB 276 (S-1) requires rulemaking agencies to expand record-keeping and reporting standards. SB 276 (S-1) alters 1969 PA 306 to include additional functions of the ORR in reviewing and reporting rule proposals; these alterations would not likely have a significant impact on LARA's budget because these functions are already required by EO 2011-5.

Senate Bill 278 (S-1) would increase administrative expenses of agencies within LARA and other state departments by an indeterminate amount. SB 278 (S-1) requires rulemaking agencies to develop additional regulatory review schedules and standards; these standards resemble specific functions of the ORR required by EO 2011-5.

BACKGROUND INFORMATION:

The Office of Regulatory Reform was created within the Executive Office by EO 1995-5 (MCL 10.151) and subsequently codified within the Department of Management and Budget by 1999 PA 262 (MCL 24.234). The Office of Regulatory Reform was then transferred back into the Executive Office by EO 2000-1 (MCL 10.152), before being transferred back into the Department of Management and Budget by EO 2002-7 (MCL 10.153). EO 2005-1, as amended, transferred the authority of the Office of Regulatory Reform to the newly created State Office of Administrative Hearings and Rules (SOAHR) and abolished the Office of Regulatory Reform. The Office of Regulatory Reinvention (ORR) was created by EO 2011-5 within the Department of Licensing and Regulatory Affairs and the authority that EO 2005-1 transferred to the SOAHR (abolished by EO 2011-4) was transferred to the ORR.

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Paul Holland
Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.