



Senate Fiscal Agency
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BILL  ANALYSIS

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Senate Bills 271, 272, and 274 (as enacted)
Sponsor: Senator Jack Brandenburg (S.B. 271)
Senator Mike Kowall (S.B. 272)
Senator John Pappageorge (S.B. 274)
Senate Committee: Economic Development
House Committee: Regulatory Reform

Date Completed: 7-17-13

CONTENT

The bills amended the Administrative Procedures Act (APA) to revise provisions that govern the promulgation of administrative rules.

Senate Bill 271 does the following:

- Requires the Office of Regulatory Reinvention (ORR) to include a small business impact statement with its notice of transmittal to the Joint Committee on Administrative Rules (JCAR) regarding a proposed rule.
- Requires a regulatory impact statement to include comparison of a proposed rule to standards in similarly situated states, if requested by the ORR.
- Requires an agency to post a regulatory impact statement on its website at least 10 days before a public hearing on a proposed rule.

Senate Bill 272 does the following:

- Requires an agency to consider exempting small businesses from a rule under certain circumstances and expands the methods by which an agency must reduce the economic impact of a rule on small business.
- Requires a court's determination of the validity or applicability of a rule to include the agency's failure to assess accurately the rule's impact

PUBLIC ACTS 242, 243, & 245 of 2011

on businesses, including small businesses.

Senate Bill 274 does the following:

- Allows JCAR to hold a hearing on any rule previously filed with the Secretary of State or on any matter it considers appropriate.
- Requires an agency to withdraw any rule pending before JCAR at final adjournment of a two-year legislative session and resubmit that rule.

The bills took effect on December 8, 2011.

Senate Bill 271

Under the APA, after the required notice is given for the proposal of a rule and before the agency proposing the rule has formally adopted it, the agency must prepare an agency report containing a synopsis of the comments contained in the public hearing record and a copy of the regulatory impact statement required by the Act. Under the bill, that report also must contain a copy of the request for rule-making (which an agency is required to file with the ORR before initiating changes or additions to rules).

The APA requires the ORR to transmit the agency reports, a copy of the regulatory impact statement, and certificates of approval from the Legislative Service Bureau and the ORR, by notice of transmittal, to JCAR. An agency must prepare and include

a regulatory impact statement with a notice of transmittal. Under the bill, an agency also must prepare and include with a notice of transmittal the request for rule-making, the response from the ORR, and a small business impact statement.

The APA specifies information that a regulatory impact statement must contain. Under the bill, that statement also must include both of the following:

- A comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities, if requested by the ORR.
- A detailed recitation of the agency's efforts to comply with the Act's mandate to reduce the disproportionate impact of the rule upon small business.

In addition, the APA requires a regulatory impact statement to contain an identification of the sources the agency relied upon in compiling that statement. The bill requires this to include the methodology used in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.

The APA requires an agency to electronically transmit a regulatory impact statement to the ORR at least 28 days before a required public hearing. The bill also requires the agency to publish the regulatory impact statement on its website at least 10 days before the date of the public hearing.

Senate Bill 272

Impact on Small Business

Under the bill, 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 their size, the agency must consider exempting small business and, if not exempted, reduce the economic impact of the rule on small business by doing *all* of the following when it is lawful and feasible in meeting the objectives of the authorizing statute:

- Identify and estimate the number of small businesses affected by the

proposed rule and its probable effect on small businesses.

- Establish differing compliance or reporting requirements or timetables for small businesses after projecting the required reporting, record-keeping, and other administrative costs.
- Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.
- Establish performance standards to replace design or operational standards required in the proposed rule.

Those factors must be addressed specifically in the small business impact statement.

Previously, the agency was required to reduce the economic impact of the rule on small business by doing *one or more* of the following when it was lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- Establishing differing compliance or reporting requirements or timetables for small businesses.
- Consolidating or simplifying the compliance and reporting requirements for small businesses.
- Establishing performance rather than design standards, when appropriate.
- Exempting small business from any or all of the rule's requirements.

Under the bill, in reducing the disproportionate economic impact on small business, an agency must use the following classifications of small business:

- 0-9 full-time employees.
- 10-49 full-time employees.
- 50-249 full-time employees.

Previously, an agency was authorized, but not required, to use those classifications, if appropriate, in reducing the disproportionate economic impact of a rule on small business.

Challenge to Validity or Applicability of Rule

The APA specifies that, unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule may be determined in an action for declaratory judgment when the court finds that the rule or its threatened

application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. Under the bill, determination of the validity or applicability of a rule must include the failure of an agency to assess accurately the impact of the rule on businesses, including small businesses, in its regulatory impact statement.

Senate Bill 274

The Joint Committee on Administrative Rules consists of five members of the Senate and five members of the House of Representatives. Of the members from each chamber of the Legislature, three are from the majority party and two are from the minority party. The chairperson alternates between houses each year. The APA authorizes JCAR to hold a hearing on a rule transmitted to the Committee. Under the bill, JCAR also may hold a hearing on any rule previously filed with the Secretary of State, or on any other matter the Committee considers appropriate.

Under the APA, after JCAR has received a notice of transmittal for a proposed rule, the Committee has 15 session days in which to consider the rule and to object to it by filing a notice of objection approved by a concurrent majority of the Committee members, or JCAR may, by concurrent majority, waive the remaining session days.

The bill requires an agency to withdraw any rule pending before JCAR at the final adjournment of a regular legislative session held in an even-numbered year and resubmit that rule. A new and untolled 15 session-day time period will begin upon resubmission of the rule to the Committee for consideration.

"Session day" means a day in which both the Senate and the House convene in session and, under the bill, in which a quorum is recorded.

MCL 24.245 (S.B. 271)
24.240 & 24.264 (S.B. 272)
24.235 & 24.245a (S.B. 274)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 271

The bill requires additional content in regulatory impact statements issued by State agencies that are proposing new administrative rules. To the extent that agencies were not previously analyzing the impact of new rule proposals on small businesses and comparing the proposals to similar rules already established in other states, the bill will result in some additional administrative costs to these agencies.

Senate Bill 272

The bill adds requirements for State agencies proposing new administrative rules. These new requirements will result in some additional, relatively minor, administrative costs.

Senate Bill 274

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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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.