

Legislative Analysis



REVIEW OF ADMINISTRATIVE RULES

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<http://www.house.mi.gov/hfa>

House Bill 5858 as introduced
Sponsor: Rep. Luke Meerman
Committee: Government Operations
Revised 9-21-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5858 would amend the Administrative Procedures Act to require state agencies to review all of their administrative rules at least once every five years by reviewing a fifth of their rules each year. The review process would have to allow for public comment. The agency would have to make available a report of the review that includes such things as whether a rule is necessary, whether it should be updated, public comments received, and the fiscal impact of each rule on the agency, local government, and businesses. Rules that the agency failed to include in its report (after opportunity to correct omissions) would be automatically rescinded. The auditor general would have to conduct a performance audit of all review reports.

Selection of rules for review

Under the bill, by January 31, 2024, and each following January 31, every *agency* that has promulgated rules (or is the successor to an agency that promulgated rules) would have to select for review 20% of those rules currently in effect and submit a list of the rules selected to the Michigan Office of Administrative Hearings and Rules (MOAHR).

Agency means a state department, bureau, division, section, board, commission, trustee, authority, or officer created by the constitution, statute, or agency action. Agency does not include an agency in the state legislative or judicial branch, the governor, an agency with direct governing control over an institution of higher education, the Civil Service Commission, an association of insurers created under the Insurance Code, or an association or facility formed under the Insurance Code as a nonprofit organization of insurer members.

Each rule would have to be reviewed at least once every five years.

Rule review list

Using the lists submitted as above, MOAHR would have to publish in the Michigan Register a rule review list that includes all of the following information:

- All of the rules being reviewed.
- A statement that, within 60 days after the rule review list is published, a person may submit any comments concerning a rule to the agency that promulgated it. Comments would have to contain the following information:
 - The name of the person submitting the comment.
 - An identification of the rule or rules being commented on.
 - Any views or arguments regarding the rule or rules.
- The address to which written comments may be sent and the date by which they must be mailed or electronically submitted.

Rule report

By January 31 in the year after the year the rule review list was published, each agency would have to prepare a rule report containing all of the following information:

- Whether each rule is necessary, outdated, or duplicative.
- Whether a less restrictive, more narrowly tailored, or alternative rule could adequately accomplish the same purpose.
- Whether each rule needs to be updated or should be rescinded.
- The fiscal impact of each rule on each of the following:
 - The agency that promulgated the rule.
 - Businesses and individuals, as applicable, including whether the rule has a disproportionate impact on businesses of a certain size, within a certain industry, or in certain geographic areas of the state.
 - Local governments.
- A list of comments received and the agency's response to each comment, as applicable.
- Whether the legislature explicitly delegated statutory authority for promulgating the rule and, if so, whether the statutory delegation is general or specific and whether it is mandatory or permissive.

Distribution of rule report

The rule report would have to be made available on the agency's website and provided to all of the following:

- The Joint Committee on Administrative Rules (JCAR).
- The governor.
- The standing committees of the Senate and House of Representatives with primary responsibilities for issues pertaining to the agency.
- The auditor general.
- The appropriations committees of the Senate and House of Representatives.
- The appropriations subcommittees with primary responsibilities for issues pertaining to the agency.

JCAR would have to electronically provide a copy of the rule report to its members by the next business day after receiving the report.

Notice of deficient report

If an agency failed to include in its rule report a rule that was subject to review, JCAR would have to notify MOAHR of the deficient report within 14 days. MOAHR would have to publish a notice of deficient report in the Michigan Register. Within 14 days after publication of that notice, the agency would have to submit, as described above, a new report that corrects the deficiencies.

Automatic rescission

If the agency failed to submit a new report within 60 days after publication of the notice of deficient report, any rule that was not included in the report and was not corrected in a new report would be automatically rescinded. MOAHR would have to provide notice to the secretary of state of any rule rescinded under this provision, and the rule would be automatically rescinded when that notice is provided.

Auditor general performance audit

By January 15, 2026, and each following January 15, the auditor general would have to conduct a performance audit of, and provide a performance report on, any rule report submitted as described above. The performance report would have to be submitted to the governor, the leadership of the Senate and House of Representatives, JCAR, all standing committees, the appropriations committees, and the public by posting it on the auditor general's website. The performance report would have to contain all of the following information:

- Whether the applicable state department reviewed all required rules.
- Whether the department's findings regarding statutory delegation of authority on each rule were correct.
- Whether the department's rescission of duplicative, outdated, or unnecessary rules was timely.
- Any other information that is relevant to help the legislature determine whether the regulatory review process is working efficiently and effectively.

MCL 24.208 and 24.231 and proposed MCL 24.247a

FISCAL IMPACT:

House Bill 5858 would increase costs to the auditor general by an unknown amount. The amount of any increased costs to the auditor general would depend upon additional administrative costs and staff resources that may be required to conduct performance audits and provide performance reports on the rule reports that the bill requires agencies to prepare and publish.

In addition, the bill would likely create additional costs for the Department of Licensing and Regulatory Affairs for IT updates to the administrative rulemaking system and additional staff for administrative functions to implement the bill's provisions.

The bill would also lead to an increased workload for all state departments for rulemaking tasks, which would require additional staff time and resources above what is required in the current rulemaking environment. The magnitude of these costs is indeterminate and would likely vary by department.

The bill would have no significant fiscal impact on local governments.

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