

Legislative Analysis



IMPACT OF RULES ON FARM OPERATIONS

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

House Bill 5974 as introduced
Sponsor: Rep. David Farhat
Committee: Agriculture and Resource Management
First Analysis (6-17-04)

BRIEF SUMMARY: The bill would require a regulatory impact statement that accompanies a proposed administrative rule from a state department to include an estimate of the rule's impact on farming operations.

FISCAL IMPACT: There is no information at present.

THE APPARENT PROBLEM:

Since 1980, the Administrative Procedures Act (Public Act 306 of 1969) has required state agencies to prepare and include with the notice of transmittal of a rule to the Joint Committee on Administrative Rules, a statement on the impact of the proposed rule on certain groups affected by the rule. At the time, Public Act 455 required state agencies to submit an impact statement to the Joint Committee on Administrative Rules that included the estimated impact of the proposed rules on (1) the revenues, expenditures, and the paper work requirements of the agency proposing the rule; (2) the revenues and expenditures of any other state or local government agency affected by the proposed rule; and (3) the taxpayers, consumers, industry or trade groups, small business, or other applicable groups affected by the proposed rule.

Since the enactment of Public Act 262 of 1999, the regulatory impact statement includes a list of 25 kinds of information, including a comparison with parallel federal rules, an identification of the behavior the rule is intended to alter and the frequency of such behavior, and an estimate of costs for imposing and complying with the rule, both to the agency itself and to other affected parties.

Currently, the act does not specifically require the regulatory impact statement to address a proposed rule's impact on farming operations. Though the regulatory impact statement identifies businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the proposed rule and includes an estimate of the compliance costs of all small businesses affected by the rule and the ability of small businesses to absorb those costs, it is generally believed that the concerns of farming operations largely go unnoticed when rules are promulgated (save, perhaps, for rules promulgated by the Department of Agriculture). Legislation requiring the regulatory impact statement to address a rule's impact on farming operations has been introduced.

THE CONTENT OF THE BILL:

The bill would amend the Administrative Procedures Act to require the regulatory impact statement developed by a state agency when it promulgates a rule to also address the impact of the proposed rule on a farm operation (as defined) under the Right to Farm Act.

MCL 24.245

BACKGROUND INFORMATION:

Farm Operations

Under the Right to Farm Act (Public Act 93 of 1981), “farm operation” is defined to mean the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- Marketing produce at roadside stands or farm markets.
- The generation of noise, odors, dust, fumes, and other associated conditions.
- The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- Field preparation and ground and aerial seeding and spraying.
- The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- Use of alternative pest management techniques.
- The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- The conversion from a farm operation activity to other farm operation activities.
- The employment and use of labor.

Regulatory Impact Statement

Under the Administrative Procedures Act, the regulatory impact statement must include the following:

- A comparison of the proposed rule to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.
- An identification of the behavior and frequency of behavior that the rule is designed to alter.
- An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.
- An estimate of the change in the frequency of the targeted behavior expected from the rule.
- An identification of the businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule.
- An identification of any reasonable alternatives to regulation pursuant to the proposed rule that would achieve the same or similar goals.
- A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms.
- An estimate of the cost of rule imposition on the agency promulgating the rule.
- An estimate of the actual statewide compliance costs of the proposed rule on individuals.
- An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.
- An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.
- An identification of the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule.
- An analysis of the costs of compliance for all small businesses affected by the proposed rule, including costs of equipment, supplies, labor, and increased administrative costs.

- An identification of the nature and estimated cost of any legal consulting and accounting services that small businesses would incur in complying with the proposed rule.
- An estimate of the ability of small businesses to absorb the additional estimated costs) without suffering economic harm and without adversely affecting competition in the marketplace.
- An estimate of the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.
- An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.
- A statement describing the manner in which the agency reduced the economic impact of the rule on small businesses or a statement describing the reasons such a reduction was not feasible.
- A statement describing whether and how the agency has involved small businesses in the development of the rule.
- An estimate of the primary and direct benefits of the rule.
- An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.
- An estimate of any increase in revenues to state or local governmental units as a result of the rule.
- An estimate of any secondary or indirect benefits of the rule.
- An identification of the sources the agency relied upon in compiling the regulatory impact statement.
- Any other information required by the office of regulatory reform.

ARGUMENTS:

For:

Regulatory impact statements should include a statement about the impact of a proposed rule on farming operations. Often when a rule is promulgated by a department (usually one other than the Department of Agriculture) there is no discussion of the rule's impact on farming operations. This is particularly troublesome to the agricultural industry as it is one that has only a limited ability to absorb or shift any costs associated with the proposed rule.

In addition, this bill helps to ensure that the concerns of the agricultural industry are addressed by the state agency when promulgating a rule. For instance, there has been some concern that the Department of Environmental Quality has not sufficiently addressed concerns raised by cattle farmers in proposing rules relating to Concentrated Animal Feeding Operations and that the proposed rules do not balance the interests of those affected by the rules.

Against:

The regulatory impact statement already includes 25 different kinds of information that all state agencies must address when promulgating a rule, including the impact on businesses of all kinds. The addition of yet another requirement makes an already lengthy process more burdensome to state agencies.

POSITIONS:

The Michigan Farm Bureau supports the bill. (6-15-04)

The Michigan Department of Agriculture opposes the bill. (6-15-04)

Legislative Analyst: Mark Wolf

■ 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.