



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 273, 276, and 278 (as introduced 3-17-11)
Sponsor: Senator Dave Robertson (S.B. 273 & 276)
Senator Geoff Hansen (S.B. 278)
Committee: Economic Development

Date Completed: 4-26-11

CONTENT

Senate Bill 273 would amend Public Act 27 of 1984, which provides civil immunity to members of the Legislature for acts done pursuant to duty as legislators, to revise a provision pertaining to a contested case under the Administrative Procedures Act.

Senate Bill 276 would amend the Administrative Procedures Act (APA) to do the following:

- Require an agency's request for rule-making to include the decision record of an advisory committee, if applicable.
- Specify that the State Office of Administrative Hearings and Rules (SOAHR) would not be required to approve a request for rule-making and could do so only after it had indicated that there were appropriate and necessary bases for approving the request.
- Require SOAHR to issue a response to a request for rule-making that specifically addressed whether there were appropriate and necessary bases for approval.
- Require SOAHR to post certain information regarding a proposed rule on its website and to facilitate linking that information to the appropriate department or agency website.

Senate Bill 278 would amend the APA to do the following:

- Require an agency's annual regulatory plan to include rules the agency expected to review in the next year.
- Require an agency and appropriate standing committees of the Legislature to review each set of rules over a six-year period, based on the priority specified in the bill.
- Establish standards for a review of rules required by the bill.

(Executive Order (E.O.) 2011-4 created the Department of Licensing and Regulatory Affairs (LARA), created the Michigan Administrative Hearing System within LARA, and abolished SOAHR. The E.O. transferred much of SOAHR's authority, except for its rule-making authority, to the Michigan Administrative Hearing System.

Executive Order 2011-5 created the Office of Regulatory Reinvention (ORR) within LARA, and transferred to ORR all authority, powers, duties, functions, responsibilities, and rule-making authority previously granted to SOAHR related to administrative rules.

Both Executive Orders took effect on April 25, 2011.)

Senate Bill 273

Under Public Act 27 of 1984, a member of the Legislature may not be made a party in a contested case under Section 3(3) of the APA, or any other administrative proceeding, for any act done by him or her "pursuant to" his or her duty as a legislator. Under the bill, a member of the Legislature could not be made a party to a contested case under Section 3 or any other administrative proceeding for any act committed by the legislator "while performing" his or her duty as a legislator.

(Section 3(3) of the APA defines "contested case" as a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. Section 3 also defines "adoption of a rule", "agency", "committee", "court", and "guideline". Senate Bill 276 would add definitions of "advisory committee" and "decision record".)

Senate Bill 276

Under the APA, before initiating any changes or additions to rules, an agency must electronically file a request for rule-making with SOAHR. The request must include all of the following:

- The State or Federal statutory or regulatory basis for the rule.
- The problem the rule intends to address.
- An assessment of the significance of the problem.

Under the bill, the request for rule-making also would have to include the decision record, if applicable. "Decision record" would mean, if an advisory committee had made recommendations or comments to an agency in regard to a request for rule-making, all of the following:

- The minutes of all meetings of the advisory committee related to the request for rule-making.
- The votes of advisory committee members.
- A summary of the discussion and reasoning in support of the advisory committee's recommendations or comments.

"Advisory committee" would mean any advisory committee or other advisory entity that develops and recommends specific language to an agency for proposed rules.

The APA prohibits an agency from proceeding with the processing of a rule unless SOAHR has approved the request for rule-making. The bill specifies that SOAHR would not be required to approve a request for rule-making and could do so only after it had indicated in its response to the request for rule-making submitted by an agency that there were appropriate and necessary policy and legal bases for approving the request.

Under the Act, SOAHR must record the receipt of all requests for rule-making on the internet and make electronic or paper copies of approved requests for rule-making available to members of the general public upon request. The bill would delete "upon request". Also, the bill would require SOAHR to issue a written or electronic response to the request for

rule-making that specifically addressed whether there were appropriate and necessary policy and legal bases for approving the request.

Section 45 of the APA requires SOAHR to transmit agency reports, a copy of the regulatory impact statement required under the Act, and certificates of approval from the Legislative Service Bureau and SOAHR, by notice of transmittal, to the Joint Committee on Administrative Rules. An agency must prepare and include a regulatory impact statement with a notice of transmittal. Under the bill, SOAHR would have to post the following on its website within two business days after transmittal:

- The regulatory impact statement required under Section 45.
- Instructions on any existing administrative remedies or appeals available to the public.
- Instructions regarding the method of complying with the rules, if available.
- Any rules filed with the Secretary of State and the effective date of those rules.

The bill also would require SOAHR to facilitate linking the posted information to the department or agency website.

Senate Bill 278

The APA requires each agency to prepare an annual regulatory plan that reviews the agency's rules. ("Agency" means a State department, bureau, division, section, board, commission, trustee, authority, or officer created by the State Constitution, statute, or agency action. The term does not include an agency in the legislative or judicial branch of State government, the Governor, an agency having direct governing control over an institution of higher education, the State Civil Service Commission, or an association of insurers created under the Insurance Code or other association or facility formed under the Insurance Code as a nonprofit organization of insurer members.)

In completing the annual regulatory plan, the agency must identify the rules it reasonably expects to process in the next year, the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year. The bill also would require the plan to identify the rules the agency expected to review in the next year under the requirement described below.

Under the bill, within five years after the effective date of any new rules promulgated by an agency after the bill's effective date, or three years after the bill's effective date for rules in effect on that date, an agency and the appropriate standing committees of the Senate and the House of Representatives having jurisdiction over the subject matter would have to review each set of rules over a six-year period to determine whether there was any increased impact on businesses, including small businesses, since the effective date of those rules.

Before any review, an agency and the appropriate standing committees would have to adopt a review plan that prioritized the review of the rules over the six-year period. First priority would have to be given to those rules that directly affected the greatest number of businesses, groups, and individuals and those rules that had the greatest actual statewide compliance costs for businesses, groups, and individuals.

After the first review of new or existing rules, the agency and the appropriate standing committees would have to review rules on the seven-year anniversary of the initial review and every seven years after that.

A review of rules 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 conflicted with or duplicated 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 had changed regulatory activity covered by the rules.

MCL 4.552 (S.B. 273)
24.203 et al. (S.B. 276)
24.253 (S.B. 278)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 273

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

Senate Bill 276

The bill would require the State Office of Administrative Hearings and Rules to issue a response to each request for administrative rules addressing whether there were policy and legal bases for the rule under consideration. Currently, SOAHR must document the request. The bill's requirement could result in some additional administrative costs.

Senate Bill 278

The bill would require the department or other agency that promulgated rules to periodically review and assess each rule and determine its impact on businesses. This process could potentially result in some additional administrative costs to each department or agency that promulgates administrative rules.

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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.