



Senate Fiscal Agency
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Senate Bill 938 (as introduced 3-1-22)
Sponsor: Senator Tom Barrett
Committee: Oversight

Date Completed: 9-21-22

CONTENT

The bill would amend the Administrative Procedures Act to do the following:

- **Require, by January 31, 2024, and by each January 31 after that, each agency that had promulgated rules to select for review 20% of rules then in effect and to submit a list of the selected rules to the Michigan Office of Administrative Hearings and Rules (MOAHR).**
- **Require the MOAHR to publish in the Michigan Register a rule review list that included specified information regarding the rules being reviewed.**
- **Require each agency to prepare and submit a rule report with specified information concerning each rule, and require the report to be made available on the agency's website and provided to specified entities.**
- **Require the Joint Committee on Administrative Rules (JCAR) to provide a copy of the rule report to JCAR members by the next business day after receiving it.**
- **Allow a rule to be rescinded if an agency's failed to correct a deficient report within 60 days after being notified to do so.**
- **Require the Auditor General to conduct a performance audit of, and to provide a performance report on, any rule report submitted to it, beginning January 15, 2026, and every January 15 thereafter.**

Rule Review List

The bill would require, by January 31, 2024, and by each January 31 after that, each agency that had promulgated rules or that was the successor to an agency that had done so to select for review 20% of those rules then in effect and submit a list of those rules to the MOAHR. Each rule would have to be reviewed at least once every five years.

Using the lists, the MOAHR would have to publish a rule review list in the Michigan Register. The rule review list would have to include all of the following:

- All the rules being reviewed.
- A statement that a person could submit to the relevant agency any comments concerning the rule within 60 days after the publication of the rule review list.
- The address to which written comment could be sent and the date by which comments would have to be submitted.

Each comment filed would have to contain the name of the person submitting the comment, the specification of the rule or rules being commented on, and any views or arguments

regarding the rule or rules being commented on. The comments would have to be submitted to the appropriate agency.

Rule Review Report

By January 31 in the year following the year the rule review list was published in the Michigan Register, each agency would have to prepare and submit a rule report that contained all of the following information:

- Whether each rule was necessary, outdated, or duplicative.
- Whether a less restrictive, more narrowly tailored, or alternative rule could accomplish the same purpose.
- Whether each rule needed to be updated or rescinded.
- The fiscal impact of each rule on the relevant agency.
- The fiscal impact of each rule on businesses and individuals, including whether the rule had a disproportionate impact on businesses of a certain size, within a certain industry, or in a certain geographic area or areas of Michigan.
- The fiscal impact of the rule on local governments.
- A list of the comments received and the agency's response to each comment.
- Whether the Legislature explicitly delegated statutory authority for promulgating the rule, and if so, whether the delegation was general or specific and mandatory or permissive.

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

- JCAR.
- The Governor.
- The relevant standing committees of the Senate and House of Representatives.
- The Auditor General.
- The Senate and the House of Representatives Appropriations Committees.
- The relevant appropriations subcommittees.

Failure to Include Rule Subject to Review

If an agency failed to include in the rule report a rule that was subject to review, JCAR would notify the MOAHR within 14 days of the deficient report. The MOAHR would have to publish a notice of deficient report in the Michigan Register. The agency would have to submit a new report within 14 days after the notice of deficient report was published that corrected the deficiencies. If the agency failed to do so within 60 days after the publication of the deficient report notice, any rule not included in the report or not corrected in a new report would be automatically rescinded. The MOAHR would have to notify the Secretary of State of any rule that was rescinded under these provisions, and rescission would be automatic when the MOAHR notified the Secretary of State.

Role of Auditor General

By January 15, 2026, and every January 15 thereafter, the Auditor General would have to conduct a performance audit of, and provide a performance report on, any rule report submitted. The performance report would have to be provided to the Governor, the leadership of the Senate and House of Representatives, JCAR, all standing committees, and the Senate and House of Representatives Appropriations Committees, and the public by posting the report on the Auditor General's website. The performance report would have to contain all of the following information:

- Whether the 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 relevant information to help the Legislature determine whether the regulatory review process was working efficiently and effectively.

Michigan Register

The MOAHR must publish the Michigan Register at least once each month. The Michigan Register must include the items specified in the Act, including, e.g., executive orders and executive reorganization orders, proposed administrative rules, and administrative rules filed with the Secretary of State. The bill also would require that the Michigan Register include the rule review list and notice of deficient report described in the bill.

MCL 24.208 et al.

Legislative Analyst: Olivia Ponte

FISCAL IMPACT

The bill could have a negative fiscal impact on State government. Depending on the number of administrative rules to be reviewed, which vary by department, there could be increased administrative costs (of varying magnitude) associated with fulfilling the requirements prescribed by the bill. The exact cost for the bill per department is indeterminate and would depend on the number of rules each department would have to review. The MOAHR would see a cost increase that would depend upon the number of rules ultimately reviewed.

Fiscal Analyst: Jonah Houtz

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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.