



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4779 (Substitute H-1 as passed by the House)
House Bill 4780 (Substitute H-1 as passed by the House)
Sponsor: Representative Robert L Kosowski (H.B. 4779)
Representative Klint Kesto (H.B. 4780)
House Committee: Law and Justice
Senate Committee: Government Operations

Date Completed: 12-11-18

CONTENT

House Bill 4779 (H-1) would add Chapter 1A to the Legislative Council Act to do the following:

- Specify that if an official publisher published legal material only in an electronic record, the publisher would have to designate the electronic record as official and comply with the requirements prescribed under Chapter 1A.
- Require an official publisher of legal material in an electronic record designated as official to authenticate the record.
- Specify that authenticated legal material in an electronic record would be presumed to be an accurate copy of that legal material.
- Specify that a party contesting the authentication of legal material would have the burden of proving by a preponderance of the evidence that the record was not authentic.
- Allow the Council Administrator to enter into a cooperative agreement with the State Court Administrative Office (SCAO) regarding authentication, preservation and publication of materials related to and created by the State's courts.

House Bill 4780 (H-1) would amend the Public Act 193 of 1970, which provides for the compilation of the general laws of Michigan, to do the following:

- Require the Legislative Council and the Office of Performance and Transformation (OPT) to make those compilation available to the general public.
- Modify the information that the Council, or the OPT, would have to include for the general laws or the administrative rules.
- Require the Council to examine the electronic compilation of the Michigan Compiled Laws (MCL), and the OPT to examine the Michigan Administrative Code, as specified, and designate the electronic compilations as official.
- Specify that an individual contesting the accuracy of an electronic compilation of the MCL or the Code designated as official would have the burden of proving so by a preponderance of the evidence.

House Bill 4780 (H-1) is tie-barred to House Bill 4779.

House Bill 4779 (H-1)

Chapter 1A would apply to all legal matters in an electronic record that was designated as official and first published electronically on or after the bill's effective date.

If an official publisher published legal material only in an electronic record, the publisher would have to do both of the following:

- Designate the electronic record as official.
- Comply with requirements prescribed under Chapter 1A.

An official publisher that published legal material in an electronic record and also published the material in a record other than an electronic record could designate the electronic record as official if the publisher complied with Chapter 1A.

An official publisher of legal material in an electronic record designated as official would have to authenticate the record. To authenticate an electronic record, the publisher would have to provide a method for a user to determine that the record received by the user from the publisher was unaltered from the official record published by that publisher.

Authenticated legal material in an electronic record would be presumed to be an accurate copy of that legal material. If another state had adopted a law substantially similar to Chapter 1A, legal material in an electronic record designated as official and authenticated by the official publisher in that state would be presumed to be an accurate copy of that material.

A party contesting the authentication of legal material would have the burden of proving by a preponderance of the evidence that the record was not authentic.

An official publisher of legal material in an electronic record designated as official would have to provide for the preservation and security of the record in an electronic form or nonelectronic form. If the material were preserved in an electronic record, the publisher would have to do all of the following:

- Ensure the integrity of the record.
- Provide for backup and disaster recovery of the record.
- Ensure the continuing usability of the material.

An official publisher of legal material in an electronic record that had to be preserved would have to ensure that the material was reasonably available for use by the public on a permanent basis.

In implementing Chapter 1A, an official publisher of legal material in an electronic record would have to consider all of the following:

- Standards and practices of other jurisdictions.
- The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies.
- The needs of legal material users.
- The views of governmental officials and entities and other interested entities.
- To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material that were compatible with those used by other official publishers in Michigan and other states that have adopted a law substantially similar to Chapter 1A.

The Council Administrator could enter into a cooperative agreement with the SCAO regarding authentication, preservation and publication of materials related to and created by the State's courts.

In applying and construing Chapter 1A, states that enacted a statute on uniform electronic legal material would have to consider the need to promote uniformity of the law with respect to its subject matter. Chapter 1A would modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, would not limit certain other Federal law.

House Bill 4780 (H-1)

Public Act 193 of 1970 requires the Legislative Council to provide for compilations of all general laws in force, and for the Office of Regulatory Reform (now the Office of Performance and Transformation) to do the same for administrative rules promulgated under the Administrative Procedures Act. The bill would require the Council and the OPT to make those compilation available to the general public.

The general laws must be arranged without alteration. All compilations must include appropriate heads and titles. Printed compilations must contain an index of the laws or rules contained in the compilations and notes, references, and other materials as the Council or OPT considers necessary. The bill would require the Council to include, for the general laws, the date the compilation was last designated as official, and to identify the most recent public act include in the compilation. The OPT would have to include substantially the same information as required for the general laws for administrative rules.

The Act requires the Council and the OPT to determine the number of sets of the compiled laws, or administrative rules, to be printed and bound, the weight and kind of paper, the style and material for binding, and all other matters concerning the format and contents of the compilations. Under the bill, the Council and the OPT would have to determine all matters concerning the format and content of the compilation and the manner in which it would be made available to the general public.

Before any copies of a volume of the compilation of the compiled laws (or administrative laws) are printed and bound or otherwise made available to the general public, they must be examined and compared by the Council (or OPT) and, if in compliance with the Act, the Council (or OPT) must so certify.

The bill specifies that, not later than 180 days after the bill's effective date, the Council would have to examine the electronic compilation of the MCL and, if in compliance with the Act, the Council would have to designate it as official under Chapter 1A of the Legislative Council Act. Also, after final adjournment of a regular session held in an even-numbered year, the Council would have to authenticate that the compilation of the MCL was an accurate copy of the general laws in force through the end of that session. The bill also would require the OPT to examine the electronic compilation of the Michigan Administrative Code before it was made available to the general public for the same purposes.

After the certification, the compiled laws and administrative rules must be considered as the official statutes and administrative rules of the State and evidence in all courts having jurisdiction. The certification must be printed in each volume. Under the bill, after designation as official by the Council or OPT, the MCL and Code, as appropriate would be considered the official statutes and administrative rules of the State and evidence in all courts having jurisdiction. An individual contesting the accuracy of a compilation of the MCL or the Code

designated as official would have the burden of proving so by a preponderance of the evidence.

Proposed MCL 4.1121 et al. (H.B. 4779)
MCL 8.41 & 8.47 (H.B. 4780)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4779 (H-1)

The bill could have an indeterminate cost on the State for any necessary costs associated with information technology updates to properly archive and store the required legal materials. The costs are indeterminate and would depend on the current capacity of the Legislative Council to comply with the proposed bill's requirements; otherwise, additional funds could be necessary.

House Bill 4780 (H-1)

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

Fiscal Analyst: Joe Carrasco

SAS\S1718\s4779sa

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.