

ADMINISTRATIVE PROCEDURES ACT OF 1969 (EXCERPT)
Act 306 of 1969

24.245 Approval of rules by legislative service bureau and office; agency reports; regulatory impact statement; fiscal agency reports; exceptions.

Sec. 45.

(1) Except as otherwise provided in this subsection, an agency shall electronically submit a proposed rule to the legislative service bureau for its formal certification. If requested by the legislative service bureau, the office shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement. If the legislative service bureau fails to issue a certificate of approval within 21 calendar days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the agency before the expiration of the 21-calendar-day time period, the 21-calendar-day time period is tolled until the rule is resubmitted by the agency. After resubmission, the legislative service bureau has the remainder of the 21-calendar-day time period or 6 calendar days, whichever is longer, to consider the formal certification of the rule. The office may approve a proposed rule if it considers the proposed rule to be legal and appropriate.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a synopsis of the comments contained in the public hearing record, a copy of the request for rule-making, and the regulatory impact statement required under subsection (3). In the report, the agency shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office shall transmit by notice of transmittal to the committee copies of the rule, the agency reports containing the request for rule-making, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office. The office shall also electronically submit to the committee a copy of the rule, any agency reports required under this subsection, any regulatory impact statements required under subsection (3), and any certificates of approval required under subsection (1). The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule.

(3) Except as provided in subsection (6), an agency shall prepare and include with a notice of transmittal under subsection (2) the request for rule-making and the response from the office, a small business impact statement prepared under section 40, and a regulatory impact statement. The regulatory impact statement must contain all of the following information:

(a) 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.

(b) If requested by the office or the committee, a comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

(c) An identification of the behavior and frequency of behavior that the rule is designed to alter.

(d) 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.

(e) An estimate of the change in the frequency of the targeted behavior expected from the rule.

(f) An identification of the businesses, groups, or individuals who will be directly affected by, bear the cost of, or directly benefit from the rule.

(g) An identification of any reasonable alternatives to regulation under the proposed rule that would achieve the same or similar goals.

(h) A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms.

(i) An estimate of the cost of rule imposition on the agency promulgating the rule.

(j) An estimate of the actual statewide compliance costs of the proposed rule on individuals.

(k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.

(l) An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.

(m) An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.

(n) An identification of the nature of any report required and the estimated cost of its preparation by small businesses required to comply with the proposed rule.

(o) 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.

- (p) 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.
 - (q) An estimate of the ability of small businesses to absorb the costs estimated under subdivisions (n) to (p) without suffering economic harm and without adversely affecting competition in the marketplace.
 - (r) 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.
 - (s) An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.
 - (t) 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.
 - (u) A statement describing how the agency has involved small businesses in the development of the rule.
 - (v) An estimate of the primary and direct benefits of the rule.
 - (w) An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.
 - (x) An estimate of any increase in revenues to state or local governmental units as a result of the rule.
 - (y) An estimate of any secondary or indirect benefits of the rule.
 - (z) An identification of the sources the agency relied on in compiling the regulatory impact statement, including the methodology used in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.
 - (aa) A detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule on small businesses as described in section 40(1)(a) to (d).
 - (bb) Any other information required by the office.
- (4) An agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office not less than 28 days before the public hearing required under section 41. The agency shall not hold the public hearing until the regulatory impact statement has been reviewed and approved by the office. The agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the regulatory impact statement on its website not less than 10 days before the date of the public hearing.
- (5) The committee shall electronically transmit to the senate fiscal agency and the house fiscal agency a copy of each rule and regulatory impact statement filed with the committee and a copy of the agenda identifying the proposed rules to be considered by the committee. The senate fiscal agency and the house fiscal agency shall analyze each proposed rule for possible fiscal implications that, if the rule were adopted, would result in additional appropriations in the current fiscal year or commit the legislature to an appropriation in a future fiscal year. The senate fiscal agency and the house fiscal agency shall electronically report their findings to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.
- (6) Subsections (2), (3), and (4) do not apply to a rule that is promulgated under section 33 or 48 or a rule to which sections 41 and 42 do not apply as provided in section 44.

History: 1969, Act 306, Eff. July 1, 1970 ;-- Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971 ;-- Am. 1977, Act 108, Eff. Jan. 1, 1978 ;-- Am. 1978, Act 243, Imd. Eff. June 19, 1978 ;-- Am. 1980, Act 455, Imd. Eff. Jan. 15, 1981 ;-- Am. 1982, Act 413, Eff. Jan. 1, 1984 ;-- Am. 1983, Act 202, Imd. Eff. Nov. 10, 1983 ;-- Am. 1984, Act 273, Eff. Mar. 29, 1985 ;-- Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986 ;-- Am. 1987, Act 13, Imd. Eff. Apr. 6, 1987 ;-- Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989 ;-- Am. 1990, Act 38, Imd. Eff. Mar. 28, 1990 ;-- Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993 ;-- Am. 1999, Act 262, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004 ;-- Am. 2004, Act 491, Eff. Jan. 12, 2005 ;-- Am. 2011, Act 242, Imd. Eff. Dec. 8, 2011 ;-- Am. 2013, Act 200, Eff. Mar. 19, 2014 ;-- Am. 2016, Act 513, Imd. Eff. Jan. 9, 2017 ;-- Am. 2018, Act 602, Eff. Jan. 1, 2019 ;-- Am. 2023, Act 104, Eff. Feb 13, 2024

Constitutionality: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103; 611 NW2d 530 (2000).

Compiler's Notes: For transfer of powers and duties pertaining to small business economic impact statements under MCL 24.245 from the department of commerce to the office of regulatory reform in the executive office of the governor, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws. For creation of the office of regulatory reform within the executive office of the governor and transfer of the attorney general's duties to the office of regulatory reform, see E.R.O. No. 1995-5, compiled at MCL 10.151 of the Michigan Compiled Laws. Enacting section 2 of Act 491 of 2004 provides: "Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

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