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BILL



ANALYSIS

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Senate Bill 431 (as discharged)
Sponsor: Senator Wayne Kuipers
Committee: Government Operations and Reform

Date Completed: 6-16-09

RATIONALE

There is a concern that some administrative rules are unnecessarily burdensome, resulting in a negative impact on regulated industries and economic recovery. An administrative rule typically is a regulation, standard, policy, or ruling that implements or applies law enforced or administered by a State agency. The Administrative Procedures Act governs the process for State agencies to promulgate rules. An agency must submit a request for rule-making to the State Office of Administrative Hearings and Rules (SOAHR); prepare a regulatory impact statement; reduce a proposed rule's economic impact on small businesses, if the impact would be disproportionate; and hold a public hearing. Also, a proposed rule must be submitted to the legislative Joint Committee on Administrative Rules, which may object to it on specific grounds, and the Legislature may pass a bill preventing a rule from taking effect. Once it has been promulgated, an administrative rule has the force of law and is binding on the agency and the public at large.

To address concerns about overregulation, it has been suggested that rules should not be more stringent than Federal standards.

CONTENT

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

- Require a request for rule-making to include a cost-benefit analysis and to cite any substantially similar Federal standard.**

- Require SOAHR to deny a request for rule-making if it sought standards that were more stringent than a substantially similar Federal standard.**

The Act requires an agency, before initiating any changes or additions to rules, to file a request for rule-making with SOAHR. The request must include the State or Federal statutory or regulatory basis for the rule, the problem the rule intends to address, and an assessment of the significance of the problem.

Under the bill, if there existed a Federal statutory or regulatory standard that was substantially similar, the agency would have to cite and describe that standard. If the agency did so and if the request for rule-making sought standards that were more stringent than the Federal standard, SOAHR would have to deny the request.

The bill also would require a request for rule-making to include a cost-benefit analysis regarding any new rules or changes to existing rules.

"Substantially similar" would mean identical, with the exception of style or format differences needed to conform to the Act or other State laws.

MCL 24.239 (S.B. 431)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan's overall regulatory structure has a negative impact on manufacturers, utilities, developers, and other employers. Despite the State's economic crisis, agencies continue to propose and promulgate rules that place increased burdens on job providers. One example is a proposed rule concerning mercury emissions from coal-fired power plants, and another is a potential ergonomics rule that has been widely discussed. Regulations that exceed Federal standards create competitive disadvantages for Michigan, build barriers to economic growth, and ultimately shrink State revenue.

The bill would address these concerns by requiring SOAHR to deny a request for rule-making if the proposed rule would set standards more stringent than Federal standards.

Opposing Argument

It would be inappropriate to prohibit rules that were more stringent than Federal standards,. These rules protect the public health and safety, as well as the environment. Rules that govern the quality of drinking water, the level of mercury in the air, the working conditions of employees, or the development of wetlands, for example, have a direct impact on the quality of life of Michigan residents. State agencies' authority to promulgate rules is not unfettered; it exists only to the extent granted by statute. If there is a need to give stakeholders more input or to increase transparency, the process itself can be refined.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact based on the impact that would result from precluding approval of rule-making in certain instances.

Fiscal Analyst: Bill Bowerman

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