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BILL ANALYSIS

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Senate Bill 800 (as enrolled)
Sponsor: Senator Jason E. Allen
Senate Committee: Government Operations
House Committee: Government Operations

PUBLIC ACT 23 of 2004

Date Completed: 3-16-04

CONTENT

The bill amended the Administrative Procedures Act to provide for the electronic transmission of administrative rules and notices required under rule-making procedures.

The Act prescribes the process for a State agency to promulgate an administrative rule, which is a regulation, standard, policy, or ruling of general applicability that implements or applies law enforced or administered by the agency, or prescribes the agency's organization, procedure, or practice. At various stages of this process, copies of proposed rules and public hearing notices must be sent to the Office of Regulatory Reform (ORR), the Joint Committee on Administrative Rules (JCAR), and the Senate and House committees that deal with the subject matter of the rules. Once the approval process has been completed, the ORR must file copies of the rules with the Secretary of State.

The bill defines "notice" as a written or electronic record that informs a person of past or future action of the person generating the record. The bill defines "record" as information that is inscribed on a paper or electronic notice.

Before initiating any changes or additions to rules, an agency must file a request for rule-making with the ORR. The ORR must make copies of the request available to JCAR, and give JCAR weekly listings of requests approved or denied. The Committee must provide copies of approved or denied requests to its members and members of the Senate and House committees that deal

with the subject matter of the rule. Under the bill, these copies and the agency's filing would have to be electronic. The Act also requires the ORR to make copies of approved requests available to the public; under the bill, these copies may be electronic or paper.

Under the Act, before adopting a rule, an agency must give notice of a public hearing and transmit copies of the notice to each person who requested the agency in writing for advance notice of proposed action that might affect the person. The bill specifies that, if requested, the notice must be by mail, in writing, or electronic.

The Act prescribes how an agency must publish the notice of a public hearing, and allows the agency to use additional methods, including publication in trade, governmental, or professional publications. The bill also allows posting on the agency's website.

The Act allows a member of the Legislature annually to submit a request to the ORR asking that a copy of all (or designated) proposed rules or changes in rules be transmitted to the legislator. Under the bill, a legislator may request that rules be mailed or transmitted electronically.

The Act requires an agency to transmit a copy of proposed rules and notice of public hearing to the ORR, for publication in the *Michigan Register*. The ORR must submit a copy of the notice to JCAR, which must transmit copies to its members. Under the

bill, the copies and notices must be transmitted electronically.

If the ORR approves a proposed rule, the agency submits it to the Legislative Service Bureau (LSB) for its formal certification. The bill requires the submission to be in the form of four paper copies and electronic transmission.

Before formally adopting a proposed rule, an agency must prepare a report summarizing the contents of the public hearing record and describe any changes the agency made to the rule after the public hearing. The ORR must transmit to JCAR copies of the rule, the agency reports, and certificates of approval from the LSB and the ORR. Under the bill, the ORR also must electronically submit these items to JCAR. The bill deleted a requirement that the number of copies transmitted be the number required in the JCAR procedures but not more than 12.

An agency proposing a rule must prepare a regulatory impact statement regarding the rule and transmit the statement to the ORR and to JCAR, which must furnish a copy to the Senate and House Fiscal Agencies. The Agencies then must analyze the rule for possible fiscal implications and report their findings in writing to the Senate and House Appropriations Committees. Under the bill, the impact statement and the Agencies' findings must be transmitted or reported electronically.

Previously, after copies of rules were filed with the Secretary of State (SOS), he or she had to transmit or mail copies on which the day and hour of filing were indorsed, to the secretary of JCAR and the LSB. Under the bill, after copies of rules are filed, the SOS must transmit a paper copy on which the day and hour of filing have been indorsed, to the JCAR secretary and the ORR. Also, the SOS must send copies to the Secretary of the Senate and the Clerk of the House, who must mail or electronically transmit a copy to each member of the Legislature at his or her home address. Previously, the copy had to be mailed.

Under the Act, when the Legislature is in session, JCAR must notify the appropriate standing committees when the Secretary of State has transmitted rules to JCAR, and notify the standing committee chairs if JCAR

determines that a hearing on the rules is to be held. The bill requires these notices to be given electronically.

Under the Act, if authorized by concurrent resolution of the Legislature, JCAR may suspend a rule or part of a rule promulgated between regular sessions. The Committee must give notice of the suspension to the agency promulgating the rule, the SOS, the Department of Management and Budget, and the ORR. The bill requires electronic notice, and deleted a requirement that notice be given to the LSB.

The Act requires each agency to prepare an annual regulatory plan that reviews the agency's rules, and requires the plan to be transmitted to the ORR. After approving the plan of review, the ORR must provide a copy to JCAR, which must give a copy to members of JCAR and Senate and House committees that deal with the subject matter of rules the agency may propose. Under the bill, the agency, ORR, and JCAR must transmit the plan or a copy electronically.

In addition, the Act prescribes procedures for agencies to adopt a guideline. (A guideline is a statement or declaration of policy that the agency intends to follow, which does not have the force of law, and which binds the agency but no other person.) Before adopting a guideline, an agency must give notice to JCAR, the ORR, and each person who requested advance notice of proposed action that might affect the person; and JCAR must give notice of the proposed guideline to its members and Senate and House committees that deal with its subject matter. Under the bill, these notices must be given electronically, although the notice to a person who requested advance notice must be mailed (as previously required) or electronically transmitted. Only electronic notice is to be given to any member or agency of the legislative and executive branches. (The bill made the same changes regarding the required notice of a standard form contract.)

MCL 24.205 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The electronic transmittal of rules will result in indeterminate administrative savings to the Joint Committee on Administrative Rules. The savings will help meet reductions that were previously made to the Legislative Council's budget.

Fiscal Analyst: Bill Bowerman

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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.