

Fiscal Estimate Narratives
DATCP 1/8/2004

LRB Number	03-3630/2	Introduction Number	AB-655	Estimate Type	Original
Subject					
Omnibus regulatory reform					

Assumptions Used in Arriving at Fiscal Estimate

This bill contains major changes to the rulemaking process under ch. 227, Stats. These changes will require substantial additional staff time and expertise. Under current law, a person may challenge a rule in court if an agency fails to comply with required rulemaking procedures (s.227.40(4)(a), Stats.).

Economic Impact Report.

Under this bill, the Department of Administration may require DATCP to prepare an "economic impact report" on a proposed rule. Local governments, trade associations, and affected individuals may petition DOA to require a report. If DOA requires a report, the agency must submit the report to DOA before the agency holds hearings on the rule and before the agency submits the rule for technical review by the Legislative Council Rules Clearinghouse.

An economic impact report, if required, must contain information on the effect of the proposed rule on specific businesses, business sectors and the state's economy. When preparing the report, the agency must solicit information and advice from the Department of Commerce, and from governmental units, associations, businesses and individuals that may be affected by the rule. The report must include all of the following:

- An analysis and quantification of the problem, including any risks to public health and the environment, that the rule is intended to address.
- An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses and affected individuals.
- An analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

The agency must submit the economic impact report to DOA, to the Legislative Council Rules Clearinghouse and the petitioner(s). DOA must review the proposed rule, and issue a report. DOA's report must find all of the following:

- That the agency's economic impact report is supported by documentation in the report.
- That the agency has statutory authority to adopt the rule.
- That the rule is consistent with, and does not duplicate, other state and federal regulations (what if the state wishes to enforce its own rules that are identical to, or stronger than federal rules?).
- The agency has adequately documented the data, studies, information sources and analytical methodologies used in developing the proposed rule (what does this mean?).

The agency may not submit the rule for technical review by the Legislative Council Rules Clearinghouse (a step that must precede public hearings) until the agency receives DOA's report and approval. Presumably, DOA would not approve a rule unless it made all of the above "findings" in its report. DOA may also return a proposed rule to the agency, for further consideration or revisions. The agency head may express written disagreement with DOA. But DOA may still withhold its approval until the agency "adequately addresses" the issues raised by DOA.

"Plain Language Analysis" of Rules

Under current law, every proposed rule is preceded by a "plain language" analysis of the rule. This analysis is similar to the "plain language analysis" that accompanies legislative bills, and it is intended to serve the same purpose -- namely, to objectively summarize the provisions of the rule (bill). This bill completely

changes the "plain language analysis."

In addition to summarizing the rule comments, the "plain language analysis" will be required to include all of the following:

- An explanation of the agency's authority to adopt the rule. Agencies are currently required to identify the statutes that confer rulemaking authority, but this would also require a narrative explaining and justifying authority under each of those statutes.
- A summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities regulated by the proposed rule.
- A comparison of similar rules in adjacent states.
- A summary of the factual data and analytical methodologies that the department used in support of the proposed rule, and how any related findings support the regulatory approach chosen for the proposed rule.
- The analysis and supporting documentation that the agency used in its small business analysis (currently required) or economic impact analysis (required for many rules by this bill, see below). In essence, this apparently requires the agency to include its small business analysis (with supporting documentation) and economic impact analysis (with supporting documentation) in the "plain language analysis" that accompanies the rule.
- The anticipated costs that will be incurred by the private sector in complying with the rule.

Report to Legislature

Under current law, an agency must submit every final draft rule for legislative committee review before the agency adopts the rule. The agency must submit, with each rule, a report that summarizes the background and rationale for the rule. The report must also identify hearing participants, summarize hearing comments, summarize any changes made following public hearings, and respond to Rules Clearinghouse comments on the hearing draft rule.

Under this bill, an agency must also include in its legislative report:

- A "detailed" statement explaining the basis and purpose of the rule (including how the rule advances relevant statutory goals or purposes).
- The agency's response to public hearing comments, and any post-hearing changes to the fiscal estimate or to the greatly expanded "plain language analysis" that accompanies the rule. If an economic impact report is required, the report must also include a copy of that report and DOA's report approving the rule.

Staffing and Costs

We estimate the agency will need at least 5.0 FTE to carry out the requirements of this bill - 2.0 Economists, 2.0 Program and Planning Analysts, and 1.0 Attorney. The associated costs are \$442,500 GPR.

The agency has approximately 20 rules in active status at any point during the year and 15 to 20 new rules each year. Some of these are major rules that have a significant impact, while others are smaller or less controversial. But all rulemaking proceedings would be subject to the additional procedures required by this bill. We estimate a person would be employed full-time to prepare an economic impact report when required. The amount of time needed to complete a report will vary depending on the topic. However, we anticipate the time will be substantial given the breadth of our programs and subsequent rules. Additional staffing will be needed to meet the greatly expanded requirements for the "plain language analysis" to accompany each proposed rule.

The Department issues over 100 different types of licenses, permits, registrations, and certificates. Of these the Department charges fees for approximately 50. The majority of these fees are set by rule. The Department could be required to prepare an economic impact report for any and all fees that are proposed for modification by rule.

The following are examples of major rules that could be affected by the new procedures required under this bill:

- Livestock premise identification (legislation pending)
- Livestock facility siting (legislation pending)
- Pet facilities regulation (legislation pending)
- Spamming (legislation pending)
- Phosphorous based standards for nutrient management in farms (nonpoint water program)

- Rules to comply with federal requirements for disposition of "downer" animals (BSE preventive measure)
- Agriculture producer security program modifications
- Animal disease control and bio-security
- Food safety and consumer protection rules
- Agriculture marketing orders
- License fee adjustments

Local Impact:

The impact is indeterminate. It is not known if local government would petition for an economic analysis report of a proposed rule, how many they may petition, or what it means in terms of workload for them to prepare and monitor a petition.

Long-Range Fiscal Implications

Additional staff and funding will be needed pending the agency's experience with implementing the new requirements.

Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

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Subject Omnibus regulatory reform		
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): \$40,000 in set up costs for 5.0 FTE.		
II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$405,000	
(FTE Position Changes)	(5.0 FTE)	
State Operations - Other Costs	37,500	
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$442,500	\$
B. State Costs by Source of Funds		
GPR	442,500	
FED		
PRO/PRS		
SEG/SEG-S		
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$
NET ANNUALIZED FISCAL IMPACT		
	State	Local
NET CHANGE IN COSTS	\$442,500	\$
NET CHANGE IN REVENUE	\$	\$
Agency/Prepared By Authorized Signature Date		
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