



Economic Impact Analyses and Other Reports in Administrative Rulemaking

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State agencies promulgate administrative rules pursuant to rulemaking authority conferred by the Legislature, following the process prescribed in ch. 227, Stats. Under this process, the Legislature retains oversight of the rulemaking process through the review of proposed rules by the Legislative Council's Administrative Rules Clearinghouse, legislative standing committees in each house, and the Joint Committee for Review of Administrative Rules (JCRAR).

The initial steps of the rulemaking process include preparing an economic impact analysis (EIA) and other reports on the effect of a proposed rule. JCRAR may also request a retrospective EIA on the actual effect of a rule after it is in place. These reports may be used to assist in the review of proposed and existing rules. This issue brief summarizes the requirements for an EIA and other reports.

EIA

Elements of an EIA

Generally, an EIA must describe the economic effect of a proposed rule on businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.¹ To make this determination, an agency must consult with businesses, local governmental units, and individuals who may be affected by a proposed rule.

More specifically, an EIA must provide two monetary estimates in relation to implementation and compliance costs of a proposed rule. First, an EIA must provide an estimate of the total implementation and compliance costs that are reasonably expected to be incurred or passed along to businesses, local governmental units, and individuals as a result of a proposed rule. Second, an EIA must identify whether a total of \$10 million or more is reasonably expected to be incurred or passed along, over a two-year period, in the implementation and compliance costs.

Also, in order to place a proposed rule in context, an EIA must explain the policy problem the rule is intended to address and the approach the rule takes to the problem. For this purpose, an EIA must include a comparison with approaches taken by the federal government and the neighboring states of Illinois, Iowa, Michigan, and Minnesota. An EIA must also analyze the quantifiable benefits of the proposed rule and assess its effectiveness in addressing the policy problem.

Initial EIA

An agency must prepare an EIA for every proposed rule before the rule is submitted to the Legislative Council Rules Clearinghouse for review.² The Department of Administration has developed a template for agencies to use that combines the EIA and a fiscal estimate of the liability and revenue impact for local governmental units, the state, and the private sector, in a single form.

If an agency has determined that a proposed rule is over the threshold of \$10 million in implementation and compliance costs over a two-year period, the agency must stop work and may not continue promulgating the proposed rule. The agency may continue only if either: (1) the Legislature enacts a bill specifically authorizing promulgation of the rule; or (2) the agency adopts germane modifications to the proposed rule that reduce the economic impact below the \$10 million threshold.³

Independent EIA

Prior to an agency's submission of a final proposed rule to the Governor and the Legislature, an individual cochair of JCRAR may request an independent EIA on the proposed rule.⁴ The request must be approved by the organization committee for the cochair's house of the Legislature. If approved, a contract may be entered into for an entity other than the agency to prepare the independent EIA.

Similarly, during the JCRAR review period, JCRAR may vote to request an independent EIA on a proposed rule.⁵ The request must be approved by the organization committees for both houses.

Retrospective EIA

For any existing rule, JCRAR may vote to direct an agency to prepare a retrospective EIA.⁶ The request may be made for one or more chapters, or any sections or other subunits of a rule.

A retrospective EIA must address the same categories of analysis and determinations as an initial EIA, and must include a specific comparison between the expected economic effect when the rule was proposed and the actual economic effect.

ENERGY IMPACT REPORT

Within 30 days of an agency's public hearing on a proposed rule, certain members of the Legislature may ask the Public Service Commission to prepare an energy impact report.⁷ The report must evaluate the probable impact of the proposed rule on the cost or reliability of generation, transmission, or distribution of electricity, or on the cost or reliability of fuels used in the generation of electricity.

HOUSING IMPACT ANALYSIS

If a proposed rule may have a direct or indirect impact on the cost or availability of housing, an agency must prepare a housing impact analysis before the rule is submitted to the Legislative Council Rules Clearinghouse for review.⁸

The report must include information on both the immediate and long-term effect of the proposed rule on a number of specific considerations, including the state housing strategy plan, the costs of developing, improving, or maintaining a single- or multi-family dwelling, the purchase price of a home, the cost and availability of financing, ongoing housing costs such as homeowners or renters insurance, utilities, and property taxes, and the density, location, and size or setback of a development.

SMALL BUSINESS REGULATORY REVIEW

If a proposed rule may have an economic impact on small businesses, an agency must submit the proposed rule to the Small Business Regulatory Review Board on the same day that it submits the rule to the Legislative Council Rules Clearinghouse for review.⁹ The board must determine whether the proposed rule will have a significant economic impact on a substantial number of small businesses, and whether the agency has complied with certain specific considerations for small businesses. If the board determines that the proposed rule does have a significant impact, it may suggest changes or request other actions and report on those findings.

¹ s. 227.137 (3), Stats.

² ss. 227.137 (4) and 227.15 (1), Stats.

³ s. 227.139, Stats.

⁴ s. 227.137 (4m), Stats.

⁵ s. 227.19 (5) (b) 3., Stats.

⁶ s. 227.138, Stats.

⁷ s. 227.117, Stats.

⁸ s. 227.115, Stats.

⁹ s. 227.14 (2g), Stats.