

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 1572 - HB 1895**

March 19, 2018

**SUMMARY OF BILL:** Prohibits an agency from enacting, adopting, or enforcing an agency policy prior to review by the Attorney General (AG). Requires the AG to review all proposed agency policies within 15 days of receiving the proposed policy from the agency. Redefines “rule” and “policy” for purposes of the Uniform Administrative Procedures Act.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$15,000/One-Time  
\$373,100/Recurring**

**Other Fiscal Impact – Time constraints associated with passage of rules or approval of policies under the provisions of this legislation could result in jeopardized federal funding to the Department of Health.**

*Assumptions relative to administration:*

- The proposed language would define “policy” to include: (1) any statement or document prepared or issued by any agency pursuant to its delegated authority that merely defines, interprets, or explains the meaning of a statute or rule, and (2) any statement or document concerning the administration of an agency’s internal operation that does not affect private rights, privileges, or procedures.
- The proposed language would define “rule” to include: (1) any agency regulation, standard, or document of general applicability that describes the procedures or practice requirements of the agency, or implements, prescribes, or interprets an enactment of the General Assembly, Congress, or a federal regulation, or (2) establishes a fee.
- Agencies would be prohibited from enacting, adopting, or enforcing an agency policy until the policy was reviewed by the AG and determined to constitute a policy pursuant to the proposed language.
- The AG will review all policies submitted by agencies and within 15 days of submittal provide the chairs of the Government Operations Committees a determination on if such proposed policy meets the definition of a policy or is considered an exception to classification as a rule.

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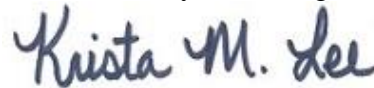
- Under current law, pursuant to Tenn. Code Ann. § 4-5-211, the AG is required to review all proposed rules to determine their legality and constitutionality. No timeframe is established for such determination by the AG.
- Based on information provided by the AG, approximately 150 sets of rules are assessed annually.
- In order to process the additional reviews of policies and rules as defined by the proposed legislation within 15 days, the AG will require 3 additional Attorneys.
- The recurring increase in state expenditures for salary, benefits, training, and supplies for 3 additional attorneys is estimated to be \$373,065 [(\$93,600 salary + \$22,455 benefits + \$8,300 training and supplies) x 3 positions].
- The total one-time increase in state expenditures for computers and other equipment for 3 additional attorneys is estimated to be \$15,000.

*Assumptions relative to federal funding:*

- The proposed language would expand the definition of “rule” to include documents of general applicability which interpret a regulation adopted by a federal agency or an enactment by Congress.
- According to the Department of Health (DOH), policy updates are frequently provided to impacted stakeholders in order to clarify federal regulations and policies. These policies can be time sensitive; thus, in the event these policies were determined to be rules, pursuant to the proposed legislation, and subject to promulgation requirements, impacted stakeholders could fall out of compliance with federal regulations and subsequently subject the DOH to a loss of federal funding.
- DOH estimates failure of entities to implement policies in a timely manner could result in loss of \$140,000,000 in federal funding to the Women, Infants, and Children (WIC) program, as well as \$6,700,000 in federal funding to Family Planning services.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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