

**104TH GENERAL ASSEMBLY****State of Illinois****2025 and 2026****HB3668**

Introduced 2/18/2025, by Rep. Jed Davis

**SYNOPSIS AS INTRODUCED:**

5 ILCS 100/5-40

from Ch. 127, par. 1005-40

5 ILCS 100/5-132 new

Amends the Illinois Administrative Procedure Act. Requires an agency in a proposed rulemaking to carry out, before moving to the second notice period, a good-faith analysis of the net new costs to be imposed upon (i) entities in the private sector and (ii) units of local government and taxing bodies other than the State of Illinois. Provides that if the proposed rulemaking is found to impose net new costs upon those entities, the text of the proposed rule must contain reliefs to balance the net new costs. Prohibits the adoption or filing of any rule or modification or repeal of any rule that imposes net new costs upon any of those entities. Provides that the Joint Committee on Administrative Rules shall scrutinize compliance with these requirements and that any failure of an agency to comply shall trigger the prohibition or suspension of a proposed rule. Creates a private cause of action for a party injured by the adoption of a rule in violation of the requirements added by the amendatory Act.

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1           AN ACT concerning government.

2           **Be it enacted by the People of the State of Illinois,**  
3           **represented in the General Assembly:**

4           Section 5. The Illinois Administrative Procedure Act is  
5           amended by changing Section 5-40 and by adding Section 5-132  
6           as follows:

7           (5 ILCS 100/5-40) (from Ch. 127, par. 1005-40)

8           Sec. 5-40. General rulemaking.

9           (a) In all rulemaking to which Sections 5-45 and 5-50 do  
10           not apply, each agency shall comply with this Section.

11           (b) Each agency shall give at least 45 days' notice of its  
12           intended action to the general public. This first notice  
13           period shall commence on the first day the notice appears in  
14           the Illinois Register. The first notice shall include all the  
15           following:

16           (1) The text of the proposed rule, the old and new  
17           materials of a proposed amendment, or the text of the  
18           provision to be repealed.

19           (2) The specific statutory citation upon which the  
20           proposed rule, the proposed amendment to a rule, or the  
21           proposed repeal of a rule is based and by which it is  
22           authorized.

23           (3) A complete description of the subjects and issues

1                   involved.

2                   (3.5) A descriptive title or other description of any  
3                   published study or research report used in developing the  
4                   rule, the identity of the person who performed such study,  
5                   and a description of where the public may obtain a copy of  
6                   any such study or research report. If the study was  
7                   performed by an agency or by a person or entity that  
8                   contracted with the agency for the performance of the  
9                   study, the agency shall also make copies of the underlying  
10                   data available to members of the public upon request if  
11                   the data are not protected from disclosure under the  
12                   Freedom of Information Act.

13                   (4) For all proposed rules and proposed amendments to  
14                   rules, an initial regulatory flexibility analysis  
15                   containing a description of the types of small businesses  
16                   subject to the rule; a brief description of the proposed  
17                   reporting, bookkeeping, and other procedures required for  
18                   compliance with the rule; and a description of the types  
19                   of professional skills necessary for compliance.

20                   (5) The time, place, and manner in which interested  
21                   persons may present their views and comments concerning  
22                   the proposed rulemaking.

23                   During the first notice period, the agency shall accept  
24                   data, views, arguments, or comments from any interested  
25                   persons. The agency shall accept submissions in writing,  
26                   including submissions by email or by other publicly accessible

1 electronic means through its website. In the discretion of the  
2 agency, submissions may be submitted orally. The notice  
3 published in the Illinois Register shall indicate the manner  
4 selected by the agency for the submissions, including the  
5 email address or website address where submissions will be  
6 accepted. The agency shall consider all submissions received.

7 The agency shall hold a public hearing on the proposed  
8 rulemaking during the first notice period if (i) during the  
9 first notice period, the agency finds that a public hearing  
10 would facilitate the submission of views and comments that  
11 might not otherwise be submitted or (ii) the agency receives a  
12 request for a public hearing, within the first 14 days after  
13 publication of the notice of proposed rulemaking in the  
14 Illinois Register, from 25 interested persons, an association  
15 representing at least 100 interested persons, the Governor,  
16 the Joint Committee on Administrative Rules, or a unit of  
17 local government that may be affected. At the public hearing,  
18 the agency shall allow interested persons to present views and  
19 comments on the proposed rulemaking. A public hearing in  
20 response to a request for a hearing may not be held less than  
21 20 days after the publication of the notice of proposed  
22 rulemaking in the Illinois Register unless notice of the  
23 public hearing is included in the notice of proposed  
24 rulemaking. A public hearing on proposed rulemaking may not be  
25 held less than 5 days before submission of the notice required  
26 under subsection (c) of this Section to the Joint Committee on

1       Administrative Rules. Each agency may prescribe reasonable  
2       rules for the conduct of public hearings on proposed  
3       rulemaking to prevent undue repetition at the hearings. The  
4       hearings must be open to the public and recorded by  
5       stenographic or mechanical means. At least one agency  
6       representative shall be present during the hearing who is  
7       qualified to respond to general questions from the public  
8       regarding the agency's proposal and the rulemaking process.

9               (b-1) On and after the effective date of this amendatory  
10       Act of the 104th General Assembly, before providing additional  
11       notice of the proposed rulemaking to the Joint Committee on  
12       Administrative Rules under subsection (c), the agency must  
13       carry out a good-faith analysis of the net new costs to be  
14       imposed by the proposed rulemaking upon (i) entities in the  
15       private sector and (ii) units of local government and taxing  
16       bodies other than the State of Illinois. If the proposed  
17       rulemaking is found to impose net new costs upon any entity  
18       under this subsection (b-1), the text of the proposed rule  
19       must contain reliefs to balance the net new costs. On and after  
20       the effective date of this amendatory Act of the 104th General  
21       Assembly, no rule or modification or repeal of any rule may be  
22       adopted, or filed with the Secretary of State, that imposes  
23       net new costs upon any entity under this subsection (b-1).

24               (c) Each agency shall provide additional notice of the  
25       proposed rulemaking to the Joint Committee on Administrative  
26       Rules. The period commencing on the day written notice is

1 received by the Joint Committee shall be known as the second  
2 notice period and shall expire 45 days thereafter unless  
3 before that time the agency and the Joint Committee have  
4 agreed to extend the second notice period beyond 45 days for a  
5 period not to exceed an additional 45 days or unless the agency  
6 has received a statement of objection from the Joint Committee  
7 or notification from the Joint Committee that no objection  
8 will be issued. The written notice to the Joint Committee  
9 shall include (i) the text and location of any changes made to  
10 the proposed rulemaking during the first notice period in a  
11 form prescribed by the Joint Committee; (ii) for all proposed  
12 rules and proposed amendments to rules, a final regulatory  
13 flexibility analysis containing a summary of issues raised by  
14 small businesses during the first notice period and a  
15 description of actions taken on any alternatives to the  
16 proposed rule suggested by small businesses during the first  
17 notice period, including reasons for rejecting any  
18 alternatives not utilized; ~~and~~ (iii) if a written request has  
19 been made by the Joint Committee within 30 days after initial  
20 notice appears in the Illinois Register under subsection (b)  
21 of this Section, an analysis of the economic and budgetary  
22 effects of the proposed rulemaking; and (iv) evidence of the  
requirements under subsection (b-1) of this Section. After  
24 commencement of the second notice period, no substantive  
25 change may be made to a proposed rulemaking unless it is made  
26 in response to an objection or suggestion of the Joint

1 Committee. The agency shall also send a copy of the final  
2 regulatory flexibility analysis to each small business that  
3 has presented views or comments on the proposed rulemaking  
4 during the first notice period and to any other interested  
5 person who requests a copy. The agency may charge a reasonable  
6 fee for providing the copies to cover postage and handling  
7 costs.

8 (d) After the expiration of the second notice period,  
9 after notification from the Joint Committee that no objection  
10 will be issued, or after a response by the agency to a  
11 statement of objections issued by the Joint Committee,  
12 whichever is applicable, the agency shall file, under Section  
13 5-65, a certified copy of each rule, modification, or repeal  
14 of any rule adopted by it. The copy shall be published in the  
15 Illinois Register. Each rule hereafter adopted under this  
16 Section is effective upon filing unless a later effective date  
17 is required by statute or is specified in the rulemaking.

18 (e) No rule or modification or repeal of any rule may be  
19 adopted, or filed with the Secretary of State, more than one  
20 year after the date the first notice period for the rulemaking  
21 under subsection (b) commenced. Any period during which the  
22 rulemaking is prohibited from being filed under Section 5-115  
23 shall not be considered in calculating this one-year time  
24 period.

25 (Source: P.A. 103-390, eff. 7-28-23.)

1 (5 ILCS 100/5-132 new)

2 Sec. 5-132. Fiscal impact of mandates imposed under the  
3 Illinois Administrative Code; cause of action.

4 (a) On and after the effective date of this amendatory Act  
5 of the 104th General Assembly, no rule or modification or  
6 repeal of any rule may be adopted, or filed with the Secretary  
7 of State, that imposes net new costs upon (i) entities in the  
8 private sector or (ii) units of local government and taxing  
9 bodies other than the State of Illinois. The Joint Committee  
10 on Administrative Rules shall scrutinize compliance with this  
11 Section and subsection (b-1) of Section 5-40 of this Act. Any  
12 failure of an agency to comply with this Section or subsection  
13 (b-1) of Section 5-40 of this Act in rulemaking shall trigger  
14 the prohibition or suspension of a proposed rule that is  
15 violative of or resultant from a violation of subsection (b-1)  
16 of Section 5-40 of this Act.

17 (b) On and after the effective date of this amendatory Act  
18 of the 104th General Assembly, publication of a rule under  
19 this Act that is violative of or resultant from a violation of  
20 subsection (b-1) of Section 5-40 of this Act shall constitute  
21 a cause of action by a party in this State who is injured by  
22 the application of the rule, against the agency that adopted  
23 the rule, for any actual damages. A claim under this  
24 subsection must be filed in the Court of Claims within one year  
25 of the date when the plaintiff discovered, or should have  
26 discovered, the injury that forms the basis of the claim.