

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4205

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending sections 32 and 45 (MCL 24.232 and 24.245), section 32
as amended by 2011 PA 270 and section 45 as amended by 2016 PA 513.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 32. (1) Definitions of words and phrases and rules of
2 construction prescribed in any statute that are made applicable to
3 all statutes of this state also apply to rules unless clearly
4 indicated to the contrary.

5 (2) A rule or exception to a rule ~~shall~~**MUST** not discriminate
6 in favor of or against any person. A person affected by a rule is
7 entitled to the same benefits as any other person under the same or
8 similar circumstances.

1 (3) The violation of a rule is a crime ~~when so~~ **IF** provided by
2 statute. ~~A~~ **UNLESS PROVIDED BY STATUTE, A** rule shall ~~shall~~ **MUST** not make
3 **DESIGNATE** an act or omission ~~to act~~ **AS** a crime or prescribe a
4 criminal penalty for violation of a rule.

5 (4) An agency may adopt ~~,~~ by reference in its rules and
6 without publishing the adopted matter in full ~~,~~ all or any part of
7 a code, standard, or regulation that has been adopted by an agency
8 of the United States or by a nationally recognized organization or
9 association. The reference shall ~~shall~~ **MUST** fully identify the adopted
10 matter by date and otherwise. The reference shall ~~shall~~ **MUST** not cover
11 any later amendments and editions of the adopted matter, but if the
12 agency wishes to incorporate them in its rule, it shall ~~amend~~ **DO SO**
13 **BY AMENDING** the rule or ~~promulgate~~ **PROMULGATING** a new rule.
14 ~~therefor.~~ The agency shall have available copies of the adopted
15 matter for inspection and distribution to the public at cost and
16 the rules shall ~~shall~~ **MUST** state where copies of the adopted matter are
17 available from the agency and the agency of the United States or
18 the national organization or association and the cost of a copy as
19 of the time the rule is adopted.

20 (5) A guideline, operational memorandum, bulletin,
21 interpretive statement, or form with instructions is not
22 enforceable by an agency, is considered merely advisory, and shall
23 **MUST** not be given the force and effect of law. An agency shall not
24 rely upon a guideline, operational memorandum, bulletin,
25 interpretive statement, or form with instructions to support the
26 agency's decision to act or refuse to act if that decision is
27 subject to judicial review. A court shall not rely upon a

1 guideline, operational memorandum, bulletin, interpretive
2 statement, or form with instructions to uphold an agency decision
3 to act or refuse to act.

4 (6) ~~Where~~ **IF** a statute provides that an agency may proceed by
5 rule-making or by order and an agency proceeds by order in lieu of
6 rule-making, the **AGENCY SHALL NOT GIVE THE** order ~~shall not be given~~
7 general applicability to persons who were not parties to the
8 proceeding or contested case before the issuance of the order,
9 unless the order was issued after public notice and a public
10 hearing.

11 (7) A rule ~~shall~~ **MUST** not exceed the rule-making delegation
12 contained in the statute authorizing the rule-making.

13 (8) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
14 **AND SUBJECT TO SUBSECTION (10), IF THE FEDERAL GOVERNMENT HAS**
15 **MANDATED THAT THIS STATE PROMULGATE RULES, AN AGENCY SHALL NOT**
16 **ADOPT OR PROMULGATE A RULE MORE STRINGENT THAN THE APPLICABLE**
17 **FEDERALLY MANDATED STANDARD UNLESS THE DIRECTOR OF THE AGENCY**
18 **DETERMINES THAT THERE IS A CLEAR AND CONVINCING NEED TO EXCEED THE**
19 **APPLICABLE FEDERAL STANDARD.**

20 (9) **EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**
21 **AND SUBJECT TO SUBSECTION (10), IF THE FEDERAL GOVERNMENT HAS NOT**
22 **MANDATED THAT THIS STATE PROMULGATE RULES, AN AGENCY SHALL NOT**
23 **ADOPT OR PROMULGATE A RULE MORE STRINGENT THAN AN APPLICABLE**
24 **FEDERAL STANDARD UNLESS SPECIFICALLY AUTHORIZED BY A STATUTE OF**
25 **THIS STATE OR UNLESS THE DIRECTOR OF THE AGENCY DETERMINES THAT**
26 **THERE IS A CLEAR AND CONVINCING NEED TO EXCEED THE APPLICABLE**
27 **FEDERAL STANDARD.**

1 (10) SUBSECTIONS (8) AND (9) DO NOT APPLY TO THE AMENDMENT OF
2 THE SPECIAL EDUCATION PROGRAMS AND SERVICES RULES, R 340.1701 TO R
3 340.1862 OF THE MICHIGAN ADMINISTRATIVE CODE. HOWEVER, SUBSECTIONS
4 (8) AND (9) DO APPLY TO THE PROMULGATION OF NEW RULES RELATING TO
5 SPECIAL EDUCATION WITH THE RESCISSION OF R 340.1701 TO R 340.1862
6 OF THE MICHIGAN ADMINISTRATIVE CODE.

7 Sec. 45. (1) Except as otherwise provided in this subsection,
8 an agency shall electronically submit a proposed rule to the
9 legislative service bureau for its formal certification. If
10 requested by the legislative service bureau, the office shall also
11 transmit up to 4 paper copies of the proposed rule. The legislative
12 service bureau shall promptly issue a certificate of approval
13 indicating whether the proposed rule is proper as to all matters of
14 form, classification, and arrangement. If the legislative service
15 bureau fails to issue a certificate of approval within 21 calendar
16 days after receipt of the submission for formal certification, the
17 office may issue a certificate of approval. If the legislative
18 service bureau returns the submission to the agency before the
19 expiration of the 21-calendar-day time period, the 21-calendar-day
20 time period is tolled until the rule is resubmitted by the agency.
21 After resubmission, the legislative service bureau has the
22 remainder of the 21-calendar-day time period or 6 calendar days,
23 whichever is longer, to consider the formal certification of the
24 rule. The office may approve a proposed rule if it considers the
25 proposed rule to be legal and appropriate.

26 (2) Except as provided in subsection (6), after notice is
27 given as provided in this act and before the agency proposing the

1 rule has formally adopted the rule, the agency shall prepare an
2 agency report containing a synopsis of the comments contained in
3 the public hearing record, a copy of the request for rule-making,
4 and the regulatory impact statement required under subsection (3).
5 In the report, the agency shall describe any changes in the
6 proposed rules that were made by the agency after the public
7 hearing. The office shall transmit by notice of transmittal to the
8 committee copies of the rule, the agency reports containing the
9 request for rule-making, a copy of the regulatory impact statement,
10 and certificates of approval from the legislative service bureau
11 and the office. The office shall also electronically submit to the
12 committee a copy of the rule, any agency reports required under
13 this subsection, any regulatory impact statements required under
14 subsection (3), and any certificates of approval required under
15 subsection (1). The agency shall electronically transmit to the
16 committee the records described in this subsection within 1 year
17 after the date of the last public hearing on the proposed rule.

18 (3) Except as provided in subsection (6), an agency shall
19 prepare and include with a notice of transmittal under subsection
20 (2) the request for rule-making and the response from the office, a
21 small business impact statement prepared under section 40, and a
22 regulatory impact statement. The regulatory impact statement must
23 contain all of the following information:

24 (a) A comparison of the proposed rule to parallel federal
25 rules or standards set by a state or national licensing agency or
26 accreditation association, if any exist.

27 **(B) IF SECTION 32(8) APPLIES AND THE PROPOSED RULE IS MORE**

1 STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD, A
2 STATEMENT OF THE SPECIFIC FACTS THAT ESTABLISH THE CLEAR AND
3 CONVINCING NEED TO ADOPT THE MORE STRINGENT RULE AND AN EXPLANATION
4 OF THE EXCEPTIONAL CIRCUMSTANCES THAT NECESSITATE THE MORE
5 STRINGENT STANDARD.

6 (C) IF SECTION 32(9) APPLIES AND THE PROPOSED RULE IS MORE
7 STRINGENT THAN THE APPLICABLE FEDERAL STANDARD, EITHER THE STATUTE
8 THAT SPECIFICALLY AUTHORIZES THE MORE STRINGENT RULE OR A STATEMENT
9 OF THE SPECIFIC FACTS THAT ESTABLISH THE CLEAR AND CONVINCING NEED
10 TO ADOPT THE MORE STRINGENT RULE AND AN EXPLANATION OF THE
11 EXCEPTIONAL CIRCUMSTANCES THAT NECESSITATE THE MORE STRINGENT
12 STANDARD.

13 (D) ~~(b)~~—If requested by the office or the committee, a
14 comparison of the proposed rule to standards in similarly situated
15 states, based on geographic location, topography, natural
16 resources, commonalities, or economic similarities.

17 (E) ~~(e)~~—An identification of the behavior and frequency of
18 behavior that the rule is designed to alter.

19 (F) ~~(d)~~—An identification of the harm resulting from the
20 behavior that the rule is designed to alter and the likelihood that
21 the harm will occur in the absence of the rule.

22 (G) ~~(e)~~—An estimate of the change in the frequency of the
23 targeted behavior expected from the rule.

24 (H) ~~(f)~~—An identification of the businesses, groups, or
25 individuals who will be directly affected by, bear the cost of, or
26 directly benefit from the rule.

27 (I) ~~(g)~~—An identification of any reasonable alternatives to

1 regulation ~~pursuant to~~ **UNDER** the proposed rule that would achieve
2 the same or similar goals.

3 **(J)** ~~(h)~~—A discussion of the feasibility of establishing a
4 regulatory program similar to that proposed in the rule that would
5 operate through market-based mechanisms.

6 **(K)** ~~(i)~~—An estimate of the cost of rule imposition on the
7 agency promulgating the rule.

8 **(L)** ~~(j)~~—An estimate of the actual statewide compliance costs
9 of the proposed rule on individuals.

10 **(M)** ~~(k)~~—A demonstration that the proposed rule is necessary
11 and suitable to achieve its purpose in proportion to the burdens it
12 places on individuals.

13 **(N)** ~~(l)~~—An estimate of the actual statewide compliance costs
14 of the proposed rule on businesses and other groups.

15 **(O)** ~~(m)~~—An identification of any disproportionate impact the
16 proposed rule may have on small businesses because of their size.

17 **(P)** ~~(n)~~—An identification of the nature of any report required
18 and the estimated cost of its preparation by small businesses
19 required to comply with the proposed rule.

20 **(Q)** ~~(o)~~—An analysis of the costs of compliance for all small
21 businesses affected by the proposed rule, including costs of
22 equipment, supplies, labor, and increased administrative costs.

23 **(R)** ~~(p)~~—An identification of the nature and estimated cost of
24 any legal consulting and accounting services that small businesses
25 would incur in complying with the proposed rule.

26 **(S)** ~~(q)~~—An estimate of the ability of small businesses to
27 absorb the costs estimated under subdivisions ~~(n) to (p)~~ **TO (R)**

1 without suffering economic harm and without adversely affecting
2 competition in the marketplace.

3 **(T)** ~~(r)~~—An estimate of the cost, if any, to the agency of
4 administering or enforcing a rule that exempts or sets lesser
5 standards for compliance by small businesses.

6 **(U)** ~~(s)~~—An identification of the impact on the public interest
7 of exempting or setting lesser standards of compliance for small
8 businesses.

9 **(V)** ~~(t)~~—A statement describing the manner in which the agency
10 reduced the economic impact of the rule on small businesses or a
11 statement describing the reasons such a reduction was not feasible.

12 **(W)** ~~(u)~~—A statement describing how the agency has involved
13 small businesses in the development of the rule.

14 **(X)** ~~(v)~~—An estimate of the primary and direct benefits of the
15 rule.

16 **(Y)** ~~(w)~~—An estimate of any cost reductions to businesses,
17 individuals, groups of individuals, or governmental units as a
18 result of the rule.

19 **(Z)** ~~(x)~~—An estimate of any increase in revenues to state or
20 local governmental units as a result of the rule.

21 **(AA)** ~~(y)~~—An estimate of any secondary or indirect benefits of
22 the rule.

23 **(BB)** ~~(z)~~—An identification of the sources the agency relied on
24 in compiling the regulatory impact statement, including the
25 methodology ~~utilized~~ **USED** in determining the existence and extent
26 of the impact of a proposed rule and a cost-benefit analysis of the
27 proposed rule.

1 **(CC)** ~~(aa)~~—A detailed recitation of the efforts of the agency
2 to comply with the mandate to reduce the disproportionate impact of
3 the rule ~~upon~~**ON** small businesses as described in section 40(1)(a)
4 to (d).

5 **(DD)** ~~(bb)~~—Any other information required by the office.

6 (4) ~~The~~**AN** agency shall electronically transmit the regulatory
7 impact statement required under subsection (3) to the office at
8 least 28 days before the public hearing required under section 41.
9 The agency shall not hold the public hearing until the regulatory
10 impact statement has been reviewed and approved by the office. The
11 agency shall also electronically transmit a copy of the regulatory
12 impact statement to the committee before the public hearing and the
13 agency shall make copies available to the public at the public
14 hearing. The agency shall publish the regulatory impact statement
15 on its website at least 10 days before the date of the public
16 hearing.

17 (5) The committee shall electronically transmit to the senate
18 fiscal agency and the house fiscal agency a copy of each rule and
19 regulatory impact statement filed with the committee and a copy of
20 the agenda identifying the proposed rules to be considered by the
21 committee. The senate fiscal agency and the house fiscal agency
22 shall analyze each proposed rule for possible fiscal implications
23 that, if the rule were adopted, would result in additional
24 appropriations in the current fiscal year or commit the legislature
25 to an appropriation in a future fiscal year. The senate fiscal
26 agency and the house fiscal agency shall electronically report
27 their findings to the senate and house appropriations committees

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1 and to the committee before the date of consideration of the
2 proposed rule by the committee.

3 (6) Subsections (2), (3), and (4) do not apply to a rule that
4 is promulgated under section 33 or 48 or a rule to which sections
5 41 and 42 do not apply as provided in section 44.

6 Enacting section 1. This amendatory act takes effect January
7 1, [2019].