

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4240

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending section 32 (MCL 24.232).

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 ~~, and which~~ **THAT** are made
3 applicable to all statutes of this state ~~, also~~ apply to rules
4 unless clearly indicated to the contrary.

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

9 (3) The violation of a rule is a crime when so provided by
10 statute. A rule shall not make an act or omission to act a crime or

1 prescribe a criminal penalty for violation of a rule.

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

16 (5) **A GUIDELINE, OPERATIONAL MEMORANDUM, BULLETIN,**
17 **INTERPRETIVE STATEMENT, OR FORM WITH INSTRUCTIONS IS NOT**
18 **ENFORCEABLE BY AN AGENCY, IS CONSIDERED MERELY ADVISORY, AND SHALL**
19 **NOT BE GIVEN THE FORCE AND EFFECT OF LAW. AN AGENCY SHALL NOT RELY**
20 **UPON A GUIDELINE, OPERATIONAL MEMORANDUM, BULLETIN, INTERPRETIVE**
21 **STATEMENT, OR FORM WITH INSTRUCTIONS TO SUPPORT THE AGENCY'S**
22 **DECISION TO ACT OR REFUSE TO ACT IF THAT DECISION IS SUBJECT TO**
23 **JUDICIAL REVIEW. A COURT SHALL NOT RELY UPON A GUIDELINE,**
24 **OPERATIONAL MEMORANDUM, BULLETIN, INTERPRETIVE STATEMENT, OR FORM**
25 **WITH INSTRUCTIONS TO UPHOLD AN AGENCY DECISION TO ACT OR REFUSE TO**
26 **ACT.**

27 (6) **WHERE A STATUTE PROVIDES THAT AN AGENCY MAY PROCEED BY**

1 RULE-MAKING OR BY ORDER AND AN AGENCY PROCEEDS BY ORDER IN LIEU OF
2 RULE-MAKING, THE ORDER SHALL NOT BE GIVEN GENERAL APPLICABILITY TO
3 PERSONS WHO WERE NOT PARTIES TO THE PROCEEDING OR CONTESTED CASE
4 BEFORE THE ISSUANCE OF THE ORDER, UNLESS THE ORDER WAS ISSUED AFTER
5 PUBLIC NOTICE AND A PUBLIC HEARING.

6 (7) A RULE SHALL NOT EXCEED THE RULE-MAKING DELEGATION
7 CONTAINED IN THE STATUTE AUTHORIZING THE RULE-MAKING.