

SUBSTITUTE FOR
HOUSE BILL NO. 4240

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending sections 32 and 40 (MCL 24.232 and 24.240), section 40
as amended by 1999 PA 262.

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 CONSIDERED**
18 **MERELY ADVISORY AND SHALL NOT BE BINDING ON ANYONE OTHER THAN THE**
19 **AGENCY OR BE GIVEN THE FORCE AND EFFECT OF LAW. AN AGENCY SHALL NOT**
20 **RELY UPON A GUIDELINE, OPERATIONAL MEMORANDUM, BULLETIN,**
21 **INTERPRETIVE STATEMENT, OR FORM WITH INSTRUCTIONS TO SUPPORT THE**
22 **AGENCY'S DECISION TO ACT OR REFUSE TO ACT IF THAT DECISION IS**
23 **SUBJECT TO JUDICIAL REVIEW.**

24 (6) **WHERE A STATUTE PROVIDES THAT AN AGENCY MAY PROCEED BY**
25 **RULE-MAKING OR BY ORDER AND AN AGENCY PROCEEDS BY ORDER IN LIEU OF**
26 **RULE-MAKING, THE ORDER SHALL NOT BE GIVEN GENERAL APPLICABILITY TO**
27 **PERSONS WHO WERE NOT PARTIES TO THE PROCEEDING OR CONTESTED CASE**

1 BEFORE THE ISSUANCE OF THE ORDER.

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

4 Sec. 40. (1) When an agency proposes to adopt a rule that will
5 apply to a small business and the rule will have a disproportionate
6 impact on small businesses because of the size of those businesses,
7 the agency **SHALL CONSIDER EXEMPTING SMALL BUSINESSES AND, IF NOT**
8 **EXEMPTED, THE AGENCY** proposing to adopt the rule shall reduce the
9 economic impact of the rule on small businesses by doing ~~1 or more~~
10 **ALL** of the following when it is lawful and feasible in meeting the
11 objectives of the act authorizing the promulgation of the rule:

12 (A) **IDENTIFY AND ESTIMATE THE NUMBER OF SMALL BUSINESSES**
13 **AFFECTED BY THE PROPOSED RULE AND ITS PROBABLE EFFECT ON SMALL**
14 **BUSINESSES.**

15 (B) ~~(a)~~ Establish differing compliance or reporting
16 requirements or timetables for small businesses under the rule
17 **AFTER PROJECTING THE REQUIRED REPORTING, RECORD-KEEPING, AND OTHER**
18 **ADMINISTRATIVE COSTS.**

19 (C) ~~(b)~~ Consolidate, ~~or~~ simplify, **OR ELIMINATE** the compliance
20 and reporting requirements for small businesses under the rule **AND**
21 **IDENTIFY THE SKILLS NECESSARY TO COMPLY WITH THE REPORTING**
22 **REQUIREMENTS.**

23 (D) ~~(c)~~ Establish performance ~~rather than design standards,~~
24 ~~when appropriate~~ **STANDARDS TO REPLACE DESIGN OR OPERATIONAL**
25 **STANDARDS REQUIRED IN THE PROPOSED RULE.**

26 ~~—— (d) Exempt small businesses from any or all of the~~
27 ~~requirements of the rule.~~

1 (2) THE FACTORS DESCRIBED IN SUBSECTION (1) (A) TO (D) SHALL BE
2 SPECIFICALLY ADDRESSED IN THE REGULATORY IMPACT STATEMENT REQUIRED
3 UNDER SECTION 45.

4 (3) ~~(2) If appropriate in~~ **IN** reducing the disproportionate
5 economic impact on small business of a rule as provided in
6 subsection (1), an agency ~~may~~ **SHALL** use the following
7 classifications of small business:

8 (a) 0-9 full-time employees.

9 (b) 10-49 full-time employees.

10 (c) 50-249 full-time employees.

11 (4) ~~(3)~~ For purposes of subsection ~~(2)~~ **(3)**, an agency may
12 include a small business with a greater number of full-time
13 employees in a classification that applies to a business with fewer
14 full-time employees.

15 (5) ~~(4)~~ This section and section 45(3) do not apply to a rule
16 ~~which~~ **THAT** is required by federal law and ~~which~~ **THAT** an agency
17 promulgates without imposing standards more stringent than those
18 required by the federal law.