

SUBSTITUTE FOR
SENATE BILL NO. 938

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 8 and 31 (MCL 24.208 and 24.231), section 8 as amended by 2004 PA 23 and section 31 as amended by 1989 PA 288, and by adding section 47a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) The **Michigan** office of ~~regulatory reform~~
2 **administrative hearings and rules** shall publish the Michigan
3 ~~register~~**Register** at least once each month. The Michigan ~~register~~
4 ~~shall~~**Register must** contain all of the following:
5 (a) Executive orders and executive reorganization orders.
6 (b) On a cumulative basis, the numbers and subject matter of
7 the enrolled senate and house **of representatives** bills signed into

1 law by the governor during the calendar year and the corresponding
2 public act numbers.

3 (c) On a cumulative basis, the numbers and subject matter of
4 the enrolled senate and house **of representatives** bills vetoed by
5 the governor during the calendar year.

6 (d) Proposed administrative rules.

7 (e) Notices of public hearings on proposed administrative
8 rules.

9 (f) Administrative rules filed with the secretary of state.

10 (g) Emergency rules filed with the secretary of state.

11 (h) Notice of proposed and adopted agency guidelines.

12 (i) Other official information considered necessary or
13 appropriate by the **Michigan** office of ~~regulatory~~
14 ~~reform~~**administrative hearings and rules**.

15 (j) Attorney general opinions.

16 (k) All of the items listed in section 7(m) after final
17 approval by the certificate of need commission under section 22215
18 of the public health code, 1978 PA 368, MCL 333.22215.

19 **(l) The rule review list described under section 47a(2).**

20 **(m) The notice of deficient report described under section**
21 **47a(7).**

22 (2) The **Michigan** office of ~~regulatory reform~~**administrative**
23 **hearings and rules** shall publish a cumulative index for the
24 Michigan ~~register~~**Register**.

25 (3) The Michigan ~~register shall~~**Register must** be available for
26 public subscription at a fee reasonably calculated to cover
27 publication and distribution costs.

28 (4) If publication of an agency's proposed rule or guideline
29 or an item described in subsection (1)(k) would be unreasonably

1 expensive or lengthy, the **Michigan** office of ~~regulatory reform~~
2 **administrative hearings and rules** may publish a brief synopsis of
3 the proposed rule or guideline or item described in subsection
4 (1)(k), including information on how to obtain a complete copy of
5 the proposed rule or guideline or item described in subsection
6 (1)(k) from the agency at no cost.

7 (5) An agency shall electronically transmit a copy of the
8 proposed rules and notice of public hearing to the **Michigan** office
9 of ~~regulatory reform~~**administrative hearings and rules** for
10 publication in the Michigan ~~register~~**Register**.

11 Sec. 31. (1) Rules which became effective before July 1, 1970
12 continue in effect until amended or rescinded.

13 (2) When a law authorizing or directing an agency to
14 promulgate rules is repealed and substantially the same rule-making
15 power or duty is vested in the same or a successor agency by a new
16 provision of law or the function of the agency to which the rules
17 are related is transferred to another agency, by law or executive
18 order, the existing rules of the original agency relating thereto
19 continue in effect until amended or rescinded, and the agency or
20 successor agency may rescind any rule relating to the function.
21 When a law creating an agency or authorizing or directing it to
22 promulgate rules is repealed or the agency is abolished and
23 substantially the same rule-making power or duty is not vested in
24 the same or a successor agency by a new provision of law and the
25 function of the agency to which the rules are related is not
26 transferred to another agency, the existing applicable rules of the
27 original agency are automatically rescinded as of the effective
28 date of the repeal of such law or the abolition of the agency.

29 (3) The rescission of a rule does not revive a rule which was

1 previously rescinded.

2 (4) The amendment or rescission of a valid rule does not
3 defeat or impair a right accrued, or affect a penalty incurred,
4 under the rule.

5 (5) Except in the case of the amendment of rules concerning
6 inmates as described in section 7(k), a rule may be amended or
7 rescinded by another rule which constitutes the whole or a part of
8 a filing of rules or as a result of an act of the legislature.

9 (6) **A rule is automatically rescinded under section 47a(7)**
10 **when the Michigan office of administrative hearings and rules**
11 **provides notice to the secretary of state.**

12 **Sec. 47a. (1) By January 31, 2024 and biennially thereafter,**
13 **each agency that has promulgated rules or that is the successor to**
14 **an agency that promulgated rules shall select for review 25% of**
15 **those rules currently in effect and submit a list of the selected**
16 **rules to the Michigan office of administrative hearings and rules.**
17 **Each rule must be reviewed at least once every 8 years.**

18 (2) Using the lists submitted under subsection (1), the
19 Michigan office of administrative hearings and rules shall publish
20 a rule review list in the Michigan Register under section 8. The
21 rule review list must include all of the following information:

22 (a) All the rules being reviewed.

23 (b) A statement that a person may submit to the agency that
24 promulgated the rule any comments concerning the rule being
25 reviewed within 60 days after the rule review list is published in
26 the Michigan Register. Each comment filed must contain the
27 following information:

28 (i) Name of the person submitting the comment.

29 (ii) Specification of the rule being commented on.

1 (iii) Any views or arguments regarding the rule being commented
2 on.

3 (c) The address to which written comments may be sent and the
4 date by which comments must be mailed or electronically submitted.

5 (3) The comments submitted under subsection (2) (b) must be
6 submitted to the agency that promulgated the rule the comment is
7 concerning.

8 (4) By July 31 in the year following the year the rule review
9 list under subsection (2) was published in the Michigan Register,
10 each agency shall prepare and submit a rule report that contains
11 all of the following information:

12 (a) Whether each rule is necessary, outdated, or duplicative.

13 (b) Whether a less restrictive, more narrowly tailored, or
14 alternative rule could adequately accomplish the same purpose.

15 (c) Whether each rule needs to be updated or should be
16 rescinded.

17 (d) The fiscal impact of each rule on the agency that
18 promulgated the rule.

19 (e) The fiscal impact of each rule on businesses and
20 individuals, as applicable, including whether the rule has a
21 disproportionate impact on businesses of a certain size, within a
22 certain industry, or in a certain geographic area of this state.

23 (f) The fiscal impact of the rule on local governments.

24 (g) A list of the comments received under subsection (2) (b)
25 and the agency's response to each comment, as applicable.

26 (h) Whether the legislature explicitly delegated statutory
27 authority for promulgating the rule.

28 (i) If the legislature delegated statutory authority under
29 subdivision (h), if the statutory delegation is general or specific

1 and mandatory or permissive.

2 (5) The rule report under subsection (4) must be made
3 available on the agency's website and provided to all of the
4 following:

5 (a) The committee.

6 (b) The governor.

7 (c) The standing committees of the senate and house of
8 representatives with primary responsibilities for issues pertaining
9 to the agency.

10 (d) The auditor general.

11 (e) The appropriations committees of the senate and house of
12 representatives.

13 (f) The appropriations subcommittees with primary
14 responsibilities for issues pertaining to the agency.

15 (6) The committee shall electronically provide a copy of the
16 rule report under subsection (4) not later than the next business
17 day after receipt of the rule report from the agency, to the
18 members of the committee.

19 (7) After the committee receives the rule report under
20 subsection (6), the committee has 21 session days in which to
21 consider the rule report and determine if the rule report contains
22 a missing rule. If the committee decides that the rule report
23 contains a missing rule, the committee may decide to allow the
24 missing rule to remain in effect as described in subsection (9). If
25 the committee determines that a rule report contains a missing
26 rule, within 6 session days, the committee must provide notice to
27 the agency that submitted the rule report, the Michigan office of
28 administrative hearings and rules, and the secretary of state. The
29 notice must contain a list of all the missing rules and any missing

1 rules that the committee decided were allowed to remain in effect
2 under this subsection, as applicable. The Michigan office of
3 administrative hearings and rules shall publish the notice in the
4 next edition of the Michigan Register that is published after the
5 notice is received. Within 14 days after the notice is published,
6 the agency that submitted the rule report shall submit a new report
7 in the same manner as described under subsections (4) and (5), that
8 includes any missing rules that the committee did not decide to
9 allow to remain in effect. If the committee decided to allow a
10 missing rule to remain in effect under this subsection, the agency
11 does not need to include that missing rule in the new rule report.
12 If the agency fails to submit a new report, any missing rule that
13 was not included in the report and was not allowed to remain in
14 effect is automatically rescinded. The Michigan office of
15 administrative hearings and rules shall provide notice to the
16 secretary of state of any rule that is rescinded under this
17 subsection. Any action taken by the committee under this subsection
18 must be by a concurrent majority vote as provided under section 35.
19 As used in this subsection:

20 (a) "Missing rule" means a rule that was subject to review and
21 included on the rule review list published under subsection (2),
22 but not included in the rule report under subsection (4).

23 (b) "Session day" means a day in which both the house of
24 representatives and the senate convene in session and a quorum is
25 recorded.

26 (8) By July 31, 2026, and biennially thereafter, the auditor
27 general shall conduct a performance audit of and provide a
28 performance report on any rule report submitted under subsection
29 (4). The performance report must be submitted to the governor, the

1 leadership of the senate and house of representatives, the
2 committee, all standing committees, the appropriations committees
3 of the senate and house of representatives, the Michigan office of
4 administrative rules and hearings, and the public by posting the
5 report on the auditor general's website. The performance report
6 must contain all of the following information:

7 (a) Whether the department reviewed all required rules.

8 (b) Whether the department's findings regarding statutory
9 delegation of authority on each rule were correct.

10 (c) Whether the department's rescission of duplicative,
11 outdated, or unnecessary rules was timely.

12 (d) Whether the department completed a performance audit on
13 the impact of the rules on business.

14 (e) Any other information that is relevant to help the
15 legislature determine whether the regulatory review process is
16 working efficiently and effectively.

17 (9) The committee has 6 session days from the date the
18 committee determines that the rule report contains a missing rule
19 to decide to allow the missing rule to remain in effect. If the
20 first vote to allow the missing rule to remain in effect fails, the
21 committee may reconsider the vote within the 6 session days.