

SENATE BILL NO. 938

March 01, 2022, Introduced by Senator BARRETT and referred to the Committee on Oversight.

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~~

1 ~~shall~~ **Register must** contain all of the following:

2 (a) Executive orders and executive reorganization orders.

3 (b) On a cumulative basis, the numbers and subject matter of
4 the enrolled senate and house **of representatives** bills signed into
5 law by the governor during the calendar year and the corresponding
6 public act numbers.

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

10 (d) Proposed administrative rules.

11 (e) Notices of public hearings on proposed administrative
12 rules.

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

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

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

16 (i) Other official information considered necessary or
17 appropriate by the **Michigan** office of ~~regulatory~~

18 ~~reform~~ **administrative hearings and rules.**

19 (j) Attorney general opinions.

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

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

24 **(m) The notice of deficient report described under section**
25 **47a(7).**

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

29 (3) The Michigan ~~register shall~~ **Register must** be available for

1 public subscription at a fee reasonably calculated to cover
2 publication and distribution costs.

3 (4) If publication of an agency's proposed rule or guideline
4 or an item described in subsection (1)(k) would be unreasonably
5 expensive or lengthy, the **Michigan** office of ~~regulatory reform~~
6 **administrative hearings and rules** may publish a brief synopsis of
7 the proposed rule or guideline or item described in subsection
8 (1)(k), including information on how to obtain a complete copy of
9 the proposed rule or guideline or item described in subsection
10 (1)(k) from the agency at no cost.

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

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

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

1 transferred to another agency, the existing applicable rules of the
2 original agency are automatically rescinded as of the effective
3 date of the repeal of such law or the abolition of the agency.

4 (3) The rescission of a rule does not revive a rule which was
5 previously rescinded.

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

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

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

16 **Sec. 47a.(1) By January 31, 2024 and by each January 31**
17 **thereafter, each agency that has promulgated rules or that is the**
18 **successor to an agency that promulgated rules shall select for**
19 **review 20% of those rules currently in effect and submit a list of**
20 **the selected rules to the Michigan office of administrative**
21 **hearings and rules. Each rule must be reviewed at least once every**
22 **5 years.**

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

27 (a) All the rules being reviewed.

28 (b) A statement that a person may submit to the agency that
29 promulgated the rule any comments concerning the rule being

1 reviewed within 60 days after the rule review list is published in
2 the Michigan Register. Each comment filed must contain the
3 following information:

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

5 (ii) Specification of the rule or rules being commented on.

6 (iii) Any views or arguments regarding the rule or rules being
7 commented on.

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

10 (3) The comments submitted under subsection (2) (b) must be
11 submitted to the agency that promulgated the rule or rules the
12 comment is concerning.

13 (4) By January 31 in the year following the year the rule
14 review list under subsection (2) was published in the Michigan
15 Register, each agency shall prepare and submit a rule report that
16 contains all of the following information:

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

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

20 (c) Whether each rule needs to be updated or should be
21 rescinded.

22 (d) The fiscal impact of each rule on the agency that
23 promulgated the rule.

24 (e) The fiscal impact of each rule on businesses and
25 individuals, as applicable, including whether the rule has a
26 disproportionate impact on businesses of a certain size, within a
27 certain industry, or in a certain geographic area or areas of this
28 state.

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

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

3 (h) Whether the legislature explicitly delegated statutory
4 authority for promulgating the rule.

5 (i) If the legislature delegated statutory authority under
6 subdivision (h), if the statutory delegation is general or specific
7 and mandatory or permissive.

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

11 (a) The committee.

12 (b) The governor.

13 (c) The standing committees of the senate and house of
14 representatives with primary responsibilities for issues pertaining
15 to the agency.

16 (d) The auditor general.

17 (e) The appropriations committees of the senate and house of
18 representatives.

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

21 (6) The committee shall electronically provide a copy of the
22 rule report under subsection (4) not later than the next business
23 day after receipt of the rule report from the agency, to the
24 members of the committee.

25 (7) If an agency fails to include in the rule report under
26 subsection (4) a rule that was subject to review, within 14 days,
27 the committee shall notify the Michigan office of administrative
28 hearings and rules of the deficient report. The Michigan office of
29 administrative hearings and rules shall publish a notice of

1 deficient report in the Michigan Register under section 8. Within
2 14 days after the notice of deficient report is published, the
3 agency that submitted the deficient report shall submit a new
4 report, in the same manner as described under subsections (4) and
5 (5), that corrects the deficiencies. If the agency fails to submit
6 a new report, within 60 days after the notice of deficient report
7 is published, any rule that was not included in the report and was
8 not corrected in a new report is automatically rescinded. The
9 Michigan office of administrative hearings and rules shall provide
10 notice to the secretary of state of any rule that is rescinded
11 under this subsection.

12 (8) By January 15, 2026, and by January 15 of each year
13 thereafter, the auditor general shall conduct a performance audit
14 of and provide a performance report on any rule report submitted
15 under subsection (4). The performance report must be submitted to
16 the governor, the leadership of the senate and house of
17 representatives, the committee, all standing committees, the
18 appropriations committees of the senate and house of
19 representatives, and the public by posting the report on the
20 auditor general's website. The performance report must contain all
21 of the following information:

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

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

25 (c) Whether or not the department's recission of duplicative,
26 outdated, or unnecessary rules was timely.

27 (d) Any other information that is relevant to help the
28 legislature determine whether the regulatory review process is
29 working efficiently and effectively.