

HOUSE BILL NO. 4826

June 15, 2023, Introduced by Reps. MacDonell, Wilson, Conlin, Arbit, Hood, Glanville, Steckloff, Price, Brenda Carter, Tsernoglou, Paiz, Rheingans, Morgan and Byrnes and referred to the Committee on Natural Resources, Environment, Tourism and Outdoor Recreation.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 33, 39a, 41, 42, 43, 44, 47, and 48 (MCL 24.233, 24.239a, 24.241, 24.242, 24.243, 24.244, 24.247, and 24.248), as amended by 2018 PA 267; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) An agency shall promulgate rules describing its
2 organization and stating the general course and method of its

1 operations. The agency may include in the rules forms with
2 instructions. Sections 41, 42, 45, **and** 45a ~~, and 66~~ do not apply to
3 promulgation of the rules.

4 (2) An agency shall promulgate rules prescribing its
5 procedures available to the public and the methods by which the
6 public may obtain information and submit requests.

7 (3) An agency may promulgate rules prescribing procedures for
8 contested cases. The rules must be consistent with this act and
9 other applicable statutes.

10 Sec. 39a. (1) ~~Subject to section 66, an~~ **An** agency may publish
11 the notice of hearing under section 42 only if the office has
12 received draft proposed rules and has given the agency approval to
13 proceed with a public hearing.

14 (2) After a grant of approval to hold a public hearing by the
15 office under subsection (1), the office shall immediately provide a
16 copy of the proposed rules to the committee. The committee shall
17 provide a copy of the proposed rules, not later than the next
18 business day after receipt of the notice from the office, to
19 members of the committee and ~~to~~ members of the standing committees
20 of the senate and house of representatives that deal with the
21 subject matter of the proposed rule.

22 Sec. 41. (1) Except as provided in ~~sections~~ **section** 44, ~~and~~
23 ~~66,~~ before the adoption of a rule, an agency, or the office, shall
24 give notice of a public hearing and offer a person an opportunity
25 to present data, views, questions, and arguments. The notice must
26 be given within the time prescribed by any applicable statute, or
27 if none, in the manner prescribed in section 42(1).

28 (2) The notice described in subsection (1) must include all of
29 the following:

1 (a) A reference to the statutory authority under which the
2 action is proposed.

3 (b) The time and place of the public hearing and a statement
4 of the manner in which data, views, questions, and arguments may be
5 submitted by a person to the agency at other times.

6 (c) A statement of the terms or substance of the proposed
7 rule, a description of the subjects and issues involved, and the
8 proposed effective date of the rule.

9 (3) The agency, or the office acting on behalf of an agency,
10 shall transmit copies of the notice described in subsection (1) to
11 each person ~~who~~**that** requested the agency in writing or
12 electronically for advance notice of proposed action that may
13 affect the person. If requested, the notice must be by mail, in
14 writing, or electronically to the last address specified by the
15 person.

16 (4) The public hearing must comply with any applicable
17 statute, but is not subject to the provisions governing a contested
18 case.

19 (5) The head of the promulgating agency or 1 or more persons
20 designated by the head of the agency who have knowledge of the
21 subject matter of the proposed rule shall be present at the public
22 hearing and ~~shall~~ participate in the discussion of the proposed
23 rule.

24 Sec. 42. (1) Except as provided in ~~sections~~**section** 44, and
25 ~~66,~~ at a minimum, an agency, or the office acting on behalf of the
26 agency, shall publish the notice of public hearing as prescribed in
27 any applicable statute or, if none, the agency, or the office
28 acting on behalf of the agency, shall publish the notice not less
29 than 10 days and not more than 60 days before the date of the

1 public hearing in ~~at least~~ **not less than** 3 newspapers of general
2 circulation in different parts of this state, 1 of which must be in
3 the Upper Peninsula.

4 (2) Additional methods that may be employed to provide notice
5 of the public hearing include publication in trade, industry,
6 governmental, or professional publications or posting on the
7 website of the agency or the office.

8 (3) In addition to the requirements of subsection (1), ~~and~~
9 ~~except as provided in section 66,~~ the agency shall electronically
10 submit a copy of the notice of public hearing to the office for
11 publication in the Michigan Register. If the office submitted the
12 notice of public hearing on behalf of the agency, the office shall
13 publish the notice of public hearing in the Michigan Register. An
14 agency's notice must be published in the Michigan Register before
15 the public hearing and the agency shall electronically file a copy
16 of the notice of public hearing with the office. Within 7 days
17 after receipt of the notice of public hearing and before the public
18 hearing, the office shall do all of the following:

19 (a) Electronically transmit a copy of the notice of public
20 hearing to the committee.

21 (b) Provide notice electronically through publicly accessible
22 internet media.

23 (4) After the office electronically transmits a copy of the
24 notice of public hearing to the committee, the committee shall
25 electronically transmit copies of the notice of public hearing, not
26 later than the next business day after receipt of the notice from
27 the office, to each member of the committee and ~~to~~ the members of
28 the standing committees of the senate and house of representatives
29 that deal with the subject matter of the proposed rule.

1 (5) After receipt of the notice of public hearing filed under
2 subsection (3), the committee may meet to consider the proposed
3 rule, take testimony, and provide the agency with the committee's
4 informal response to the rule.

5 Sec. 43. (1) Except for an emergency rule promulgated in the
6 manner described in section 48, a rule is not valid unless it is
7 processed in compliance with ~~section 66, if applicable,~~ section 42,
8 and in substantial compliance with section 41(2), (3), (4), and
9 (5).

10 (2) A proceeding to contest a rule on the ground of
11 noncompliance with the requirements of sections 41 and 42 ~~or~~
12 ~~section 66~~ must be commenced within 2 years after the effective
13 date of the rule.

14 Sec. 44. (1) Sections 41 ~~, and~~ 42 ~~, and 66~~ do not apply to an
15 amendment or rescission of a rule that is obsolete or superseded,
16 or that is required to make obviously needed corrections to make
17 the rule conform to an amended or new statute or to accomplish any
18 other solely formal purpose, if a statement to that effect is
19 included in the legislative service bureau certificate of approval
20 of the rule.

21 (2) Sections 41 and 42 do not apply to a rule that is
22 promulgated under the Michigan occupational safety and health act,
23 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially
24 similar to an existing federal standard that has been adopted or
25 promulgated under the occupational safety and health act of 1970,
26 Public Law 91-596. However, notice of the proposed rule must be
27 published in the Michigan Register ~~at least~~ **not less than** 35 days
28 before the rule is filed with the secretary of state under section
29 46(1). A reasonable period, not to exceed 21 days, must be provided

1 for the submission of written or electronic comments and views
2 following publication in the Michigan Register.

3 (3) Sections 41 and 42 do not apply to a change to a proposed
4 rule by an agency during processing of the rule if the office
5 determines under section 45c(3) that the regulatory impact and
6 impact on small businesses of the changed proposed rule are not
7 more burdensome than the regulatory impact and impact on small
8 businesses of the original proposed rule.

9 (4) For purposes of subsection (2), "substantially similar"
10 means identical, with the exception of style or format differences
11 needed to conform to this or other state laws, as determined by the
12 office.

13 Sec. 47. (1) Except for a rule processed under section 48, a
14 rule becomes effective on the date fixed in the rule, which must
15 not be earlier than 7 days after the date of promulgation, or, if a
16 date is not fixed in the rule, 7 days after the date of
17 promulgation.

18 (2) Except for a rule processed under section 48, ~~or 66,~~ an
19 agency may withdraw a promulgated rule that has not become
20 effective by filing a written request stating reasons for
21 withdrawal to the secretary of state on or before the last day for
22 filing rules for the interim period in which the rules were first
23 filed, or by filing a written request for withdrawal to the
24 secretary of state and the office, within a reasonable time, as
25 determined by the office, after the last day for filing and before
26 publication of the rule in the next supplement to the code. In any
27 other circumstances, an agency may abrogate its rule only by
28 rescission. If an agency has withdrawn a promulgated rule, it shall
29 give notice, stating reasons, to the committee that the rule has

1 been withdrawn.

2 (3) Sections 45 and 45a apply to rules for which a public
3 hearing has not been held by April 1, 2000.

4 Sec. 48. (1) If an agency finds that preservation of the
5 public health, safety, or welfare requires promulgation of an
6 emergency rule without following the notice and participation
7 procedures required by sections 41 and 42 and states in the rule
8 the agency's reasons for that finding, and the governor concurs in
9 the finding of emergency, the agency may dispense with all or part
10 of the procedures and file in the office of the secretary of state
11 the copies prescribed by section 46 endorsed as an emergency rule,
12 to 3 of which copies must be attached the certificates prescribed
13 by section 45 and the governor's certificate concurring in the
14 finding of emergency. The emergency rule is effective on filing and
15 remains in effect until a date fixed in the rule or 6 months after
16 the date of its filing, whichever is earlier. The rule may be
17 extended once for not more than 6 months by the filing of a
18 governor's certificate of the need for the extension with the
19 office of the secretary of state before expiration of the emergency
20 rule. ~~Any period or extension during which an emergency rule is~~
21 ~~effective under this subsection is tolled from the date that the~~
22 ~~environmental rules review committee makes a determination as to a~~
23 ~~similar rule under section 66(5)(c) until the date a public hearing~~
24 ~~is held on the rule under section 66(7).~~

25 (2) If the director of the department of health and human
26 services determines that an imminent danger to the health or lives
27 of individuals in this state can be prevented or controlled by
28 scheduling a substance as a controlled substance under section
29 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and

1 the administrator determines that the substance should be scheduled
2 or rescheduled as a controlled substance, the department of
3 licensing and regulatory affairs may dispense with all or part of
4 the procedures required by sections 41 and 42 and file in the
5 office of the secretary of state the copies prescribed by section
6 46 endorsed as an emergency rule, to 3 of which copies must be
7 attached the certificate of approval and the director of the
8 department of health and human services's notification under
9 section 2251(4) of the public health code, 1978 PA 368, MCL
10 333.2251. The office shall submit the emergency rule draft language
11 to the legislative service bureau for its formal certification
12 within 7 business days after receipt from the department of
13 licensing and regulatory affairs. The legislative service bureau
14 shall issue a certificate of approval indicating whether the
15 proposed rule is proper as to all matters of form, classification,
16 and arrangement within 7 business days after receiving the
17 submission and return the rule to the office. If the legislative
18 service bureau fails to issue a certificate of approval within 7
19 business days after receipt of the submission for formal
20 certification, the office may issue a certificate of approval. If
21 the legislative service bureau returns the submission to the office
22 before the expiration of the 7-business-day time period, the 7-
23 business-day time period is tolled until the rule is returned by
24 the office. The legislative service bureau has the remainder of the
25 7-business-day time period to consider the formal certification of
26 the rule. On receipt from the legislative service bureau, the
27 office shall, within 7 business days, approve the proposed rule if
28 it considers the proposed rule to be legal and appropriate. An
29 emergency rule adopted under this subsection remains in effect

1 until the earlier date of the following:

2 (a) An identical or similar rule is promulgated.

3 (b) An identical or similar bill is enacted into law.

4 (c) The administrator determines that the emergency rule is no
5 longer necessary.

6 (d) Six months after the date of its filing, which may be
7 extended for not more than 6 months by the administrator on filing
8 a certificate of extension with the office of the secretary of
9 state before the expiration of 6 months after the date of its
10 filing.

11 (3) An emergency rule must not be numbered and must not be
12 compiled in the Michigan Administrative Code, but must be noted in
13 the annual supplement to the code. The emergency rule must be
14 published in the Michigan ~~register~~ **Register** under section 8.

15 (4) If the agency desires to promulgate an identical or
16 similar rule with an effectiveness beyond the final effective date
17 of an emergency rule, the agency shall comply with the procedures
18 prescribed by this act for the processing of a rule that is not an
19 emergency rule. The rule must be published in the Michigan ~~register~~
20 **Register** and ~~in~~ the code.

21 (5) As used in this section, "administrator" means that term
22 as defined in section 7103 of the public health code, 1978 PA 368,
23 MCL 333.7103.

24 Enacting section 1. Sections 65 and 66 of the administrative
25 procedures act of 1969, 1969 PA 306, MCL 24.265 and 24.266, are
26 repealed 90 days after the effective date of this amendatory act.