

HOUSE BILL No. 6560

December 3, 2002, Introduced by Reps. Bishop, Kowall and Raczkowski and referred to the Committee on House Oversight and Operations.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 35, 45, and 45a (MCL 24.235, 24.245, and 24.245a), section 35 as amended by 1995 PA 178 and section 45 as amended and section 45a as added by 1999 PA 262.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The joint committee on administrative rules is
2 created and consists of 5 members of the senate and 5 members of
3 the house of representatives appointed in the same manner as
4 standing committees are appointed for terms of 2 years. Of the 5
5 members in each house, 3 shall be from the majority party and 2
6 shall be from the minority party. The chairperson of the commit-
7 tee shall alternate between houses each year. Members of the
8 committee shall serve without compensation but shall be
9 reimbursed for expenses incurred in the business of the

1 committee. The expenses of the members of the senate shall be
2 paid from appropriations to the senate and the expenses of the
3 members of the house of representatives shall be paid from appro-
4 priations to the house of representatives. The committee may
5 meet during a session of the legislature and during an interim
6 between sessions. The committee may hold a hearing on a rule
7 transmitted to the committee. Action by the committee, including
8 action taken under section 52, shall be by ~~concurring majorities~~
9 ~~of the members from each house~~ A SIMPLE MAJORITY OF THE
10 COMMITTEE. The committee shall report its activities and recom-
11 mendations to the legislature at each regular session.

12 (2) The committee may hire staff to assist the committee
13 under this act. However, the supervision of staff, budgeting,
14 procurement, and related functions of the committee shall be per-
15 formed by the council administrator under section 104a of the
16 legislative council act, ~~Act No. 268 of the Public Acts of 1986,~~
17 ~~being section 4.1104a of the Michigan Compiled Laws~~ 1986 PA 268,
18 MCL 4.1104A.

19 Sec. 45. (1) BEFORE APPROVAL OF A PROPOSED RULE, THE OFFICE
20 OF REGULATORY REFORM SHALL DETERMINE THAT THE PROPOSED RULE MEETS
21 THE CONDITIONS IN SECTION 45A(1)(A) THROUGH (K). If approved by
22 the office of regulatory reform, the agency may submit the pro-
23 posed rule to the legislative service bureau for its formal
24 certification. The legislative service bureau promptly shall
25 approve a proposed rule if it considers the proposed rule to be
26 proper as to all matters of form, classification, and

1 arrangement. ~~The office of regulatory reform may approve a~~
2 ~~proposed rule if it considers the proposed rule to be legal.~~

3 (2) Except as provided in subsection (6), after notice is
4 given as provided in this act and before the agency proposing the
5 rule has formally adopted the rule, the agency shall prepare an
6 agency report containing a synopsis of the comments contained in
7 the public hearing record and shall describe any changes in the
8 proposed rules that were made by the agency after the public
9 hearing. The office of regulatory reform shall transmit by
10 letter to the committee copies of the rule, the agency reports,
11 and certificates of approval from the legislative service bureau.
12 ~~and the office of regulatory reform.~~ The number of copies
13 transmitted shall be the number required in the committee proce-
14 dures and standards but not to exceed 12 copies. The agency
15 shall transmit to the committee the documents described in this
16 subsection within 1 year after the date of the last public hear-
17 ing on the proposed rule unless the proposed rule is a resubmis-
18 sion under section ~~45a(7)~~ 45A(8). THE OFFICE OF REGULATORY
19 REFORM SHALL PUBLISH A COPY OF THE PUBLIC HEARING RECORD ON ITS
20 WEBSITE.

21 (3) Except for a rule promulgated under sections 33, 44, and
22 48, the agency shall prepare and include with the letter of
23 transmittal a regulatory impact statement containing all of the
24 following information:

25 (a) A comparison of the proposed rule to parallel federal
26 rules or standards set by a state or national licensing agency or
27 accreditation association, if any exist.

1 (b) An identification of the behavior and frequency of
2 behavior that the rule is designed to alter.

3 (c) An identification of the harm resulting from the behav-
4 ior that the rule is designed to alter and the likelihood that
5 the harm will occur in the absence of the rule.

6 (d) An estimate of the change in the frequency of the tar-
7 geted behavior expected from the rule.

8 (e) An identification of the businesses, groups, or individ-
9 uals who will be directly affected by, bear the cost of, or
10 directly benefit from the rule.

11 (f) An identification of any reasonable alternatives to reg-
12 ulation pursuant to the proposed rule that would achieve the same
13 or similar goals.

14 (g) A discussion of the feasibility of establishing a regu-
15 latory program similar to that proposed in the rule that would
16 operate through market-based mechanisms.

17 (h) An estimate of the cost of rule imposition on the agency
18 promulgating the rule.

19 (i) An estimate of the actual statewide compliance costs of
20 the proposed rule on individuals.

21 (j) An estimate of the actual statewide compliance costs of
22 the proposed rule on businesses and other groups.

23 (k) An identification of any disproportionate impact the
24 proposed rule may have on small businesses because of their
25 size.

1 (l) An identification of the nature of any report and the
2 estimated cost of its preparation by small business required to
3 comply with the proposed rule.

4 (m) An analysis of the costs of compliance for all small
5 businesses affected by the proposed rule, including costs of
6 equipment, supplies, labor, and increased administrative costs.

7 (n) An identification of the nature and estimated cost of
8 any legal consulting and accounting services that small busi-
9 nesses would incur in complying with the proposed rule.

10 (o) An estimate of the ability of small businesses to absorb
11 the costs estimated under subdivisions (l) through (n) without
12 suffering economic harm and without adversely affecting competi-
13 tion in the marketplace.

14 (p) An estimate of the cost, if any, to the agency of admin-
15 istering or enforcing a rule that exempts or sets lesser stan-
16 dards for compliance by small businesses.

17 (q) An identification of the impact on the public interest
18 of exempting or setting lesser standards of compliance for small
19 businesses.

20 (r) A statement describing the manner in which the agency
21 reduced the economic impact of the rule on small businesses or a
22 statement describing the reasons such a reduction was not
23 feasible.

24 (s) A statement describing whether and how the agency has
25 involved small businesses in the development of the rule.

26 (t) An estimate of the primary and direct benefits of the
27 rule.

1 (u) An estimate of any cost reductions to businesses,
2 individuals, groups of individuals, or governmental units as a
3 result of the rule.

4 (v) An estimate of any increase in revenues to state or
5 local governmental units as a result of the rule.

6 (w) An estimate of any secondary or indirect benefits of the
7 rule.

8 (x) An identification of the sources the agency relied upon
9 in compiling the regulatory impact statement.

10 (y) Any other information required by the office of regula-
11 tory reform.

12 (4) The agency shall transmit the regulatory impact state-
13 ment required under subsection (3) to the office of regulatory
14 reform at least 28 days before the public hearing required pursu-
15 ant to section 42. Before the public hearing can be held, the
16 regulatory impact statement must be approved by the office of
17 regulatory reform. THE APPROVAL OF THE REGULATORY IMPACT STATE-
18 MENT BY THE OFFICE OF REGULATORY REFORM IS CONSIDERED A FINAL
19 AGENCY ACTION AND IS SUBJECT TO JUDICIAL REVIEW UNDER CHAPTER 6
20 IN THE SAME MANNER AS A FINAL DECISION OR ORDER OF AN AGENCY IN A
21 CONTESTED CASE. The agency shall also transmit a copy of the
22 regulatory impact statement to the committee before the public
23 hearing and the agency shall make copies available to the public
24 at the public hearing.

25 (5) The committee shall furnish the senate fiscal agency and
26 the house fiscal agency with a copy of each rule and regulatory
27 impact statement filed with the committee, as well as a copy of

1 the agenda identifying the proposed rules to be considered by the
2 committee. The senate fiscal agency and the house fiscal agency
3 shall analyze each proposed rule for possible fiscal implications
4 which, if adopted, would result in additional appropriations in
5 the current fiscal year or commit the legislature to an appropri-
6 ation in a future fiscal year. The senate fiscal agency and the
7 house fiscal agency shall report their findings in writing to the
8 senate and house appropriations committees and to the committee
9 before the date of consideration of the proposed rule by the
10 committee.

11 (6) Subsections (2), (3), and (4) do not apply to a rule
12 that is promulgated under sections 33, 44, and 48.

13 Sec. 45a. (1) Except as otherwise provided for in subsec-
14 tions ~~-(7)-~~ (8) and ~~-(8)-~~ (9), after receipt by the committee of
15 the letter of transmittal specified in section 45(2), the commit-
16 tee has ~~-21-~~ 90 calendar days in which to consider the rule and
17 to object to the rule by filing a notice of objection approved by
18 a ~~-concurrent-~~ SIMPLE majority of the committee members. A
19 notice of objection may only be approved by the committee if the
20 committee affirmatively determines by a ~~-concurrent-~~ SIMPLE
21 majority that 1 or more of the following conditions exist:

22 (a) The agency lacks statutory authority for the rule.

23 (b) The agency is exceeding the statutory scope of its
24 rule-making authority.

25 (c) There exists an emergency relating to the public health,
26 safety, and welfare that would warrant disapproval of the rule.

1 (d) The rule is in conflict with state law.

2 (e) A substantial change in circumstances has occurred since
3 enactment of the law upon which the proposed rule is based.

4 (f) The rule is arbitrary or capricious.

5 (g) The rule is unduly burdensome to the public or to a
6 licensee licensed by the rule.

7 (H) THE RULE IS NOT AUTHORIZED BY THE STATUTE UNDER WHICH
8 THE RULE WAS WRITTEN.

9 (I) THE RULE IS NOT WITHIN THE SUBJECT MATTER COVERED BY THE
10 STATUTE.

11 (J) THE RULE IS NOT IN COMPLIANCE WITH INTENT OF THE
12 STATUTE.

13 (K) THE REGULATORY IMPACT STATEMENT REQUIRED IN SECTION
14 45(3) IS INCOMPLETE, INACCURATE, OR INADEQUATE OR DID NOT CON-
15 sider RELEVANT INFORMATION.

16 (2) THE COMMITTEE MAY REQUEST THE ATTORNEY GENERAL TO REVIEW
17 THE RULES AND TO OFFER AN OPINION AS TO THEIR LEGALITY OR WHETHER
18 THE RULES CONFLICT WITH OTHER LAW. UPON SUBMISSION OF SUCH A
19 REQUEST, THE COMMITTEE HAS AN ADDITIONAL 90 DAYS TO CONSIDER THE
20 RULE AND FILE A NOTICE OF OBJECTION. THE ATTORNEY GENERAL SHALL
21 RESPOND TO THE COMMITTEE WITH ITS REVIEW WITHIN 60 DAYS AFTER
22 SUBMISSION OF A REQUEST BY THE COMMITTEE UNDER THIS SUBSECTION.

23 (3) ~~-(2)-~~ If the committee does not file a notice of objec-
24 tion within the time period prescribed in subsection (1) OR (2),
25 the office of regulatory reform may immediately file the rule
26 with the secretary of state. The rule shall take effect 7 days

1 after the date of its filing unless a later date is indicated
2 within the rule.

3 (4) ~~-(3)-~~ If the committee files a notice of objection
4 within the time period prescribed in subsection (1) OR (2), the
5 committee chair, the alternate chair, or any member of the com-
6 mittee shall cause bills to be introduced in both houses of the
7 legislature simultaneously. Each house shall place the bill or
8 bills directly on its calendar. The bills shall contain 1 or
9 more of the following:

10 (a) A rescission of a rule upon its effective date.

11 (b) A repeal of the statutory provision under which the rule
12 was authorized.

13 (c) A bill staying the effective date of the proposed rule
14 for up to ~~1 year~~ 2 YEARS.

15 (D) A BILL THAT, IN SUBSTANCE, AMENDS OR LIMITS THE APPLICA-
16 TION OF A RULE.

17 (5) ~~-(4)-~~ The notice of objection filed under subsection
18 ~~-(3)-~~ (4) stays the ability of the office of regulatory reform to
19 file the rule with the secretary of state for the following time
20 periods:

21 (a) Except as provided in subdivision (b), ~~or (c), 21~~ 90
22 consecutive calendar days.

23 (b) If both houses of the legislature are not in session for
24 more than 14 consecutive calendar days, ~~but 21 or less consec-~~
25 ~~tive calendar days following the filing of a notice of~~
26 ~~objection,~~ the ~~21-day~~ 90-DAY time period described in
27 subdivision (a) shall toll, with the remainder of the ~~21-day~~

1 90-DAY time period available for consideration upon the return of
2 both houses. ~~In no case under this subdivision shall the com-~~
3 ~~bined time period for consideration by the committee and full~~
4 ~~legislature exceed 63 consecutive calendar days.~~

5 ~~(c) If both houses of the legislature are not in session~~
6 ~~more than 21 consecutive calendar days following the filing of a~~
7 ~~timely notice of objection, the 21-day time period described in~~
8 ~~subdivision (a) shall toll, with the remainder of the 21-day time~~
9 ~~period available for consideration upon the return of both~~
10 ~~houses.~~

11 (6) ~~(5)~~ If the legislation introduced pursuant to subsec-
12 tion ~~(3)~~ (4) is defeated in either house and if the vote by
13 which the legislation failed to pass is not reconsidered in com-
14 pliance with the rules of that house, or if legislation intro-
15 duced pursuant to subsection ~~(3)~~ (4) is not adopted by both
16 houses within the time period specified in subsection ~~(4)~~ (5),
17 the office of regulatory reform may file the rule with the secre-
18 tary of state. Upon filing with the secretary of state, the rule
19 shall take effect 7 days after the filing date unless a later
20 date is specified within the rule.

21 (7) ~~(6)~~ If the legislation introduced pursuant to subsec-
22 tion ~~(3)~~ (4) is enacted by the legislature and presented to the
23 governor within the ~~21-day~~ 90-DAY period, the rules do not
24 become effective unless the legislation is vetoed by the governor
25 as provided by law. If the governor vetoes the legislation, the
26 office of regulatory reform may file the rules immediately. The

1 rule shall take effect 7 days after the date of its filing unless
2 a later effective date is indicated within the rule.

3 (8) ~~(7)~~ An agency may withdraw a proposed rule ~~under the~~
4 ~~following conditions:~~ AT ANY TIME. IF THE RULE IS RESUBMITTED,
5 THE COMMITTEE HAS A NEW 90-DAY PERIOD TO CONSIDER THE RULE AND TO
6 FILE A NOTICE OF OBJECTION UNDER SUBSECTION (1).

7 ~~(a) With permission of the chair and alternate chair, the~~
8 ~~agency may withdraw the rule and resubmit it. If permission to~~
9 ~~withdraw is granted, the 21-day time period described in subsec=~~
10 ~~tion (1) is tolled until the rule is resubmitted, except that the~~
11 ~~committee shall have at least 7 calendar days after resubmission~~
12 ~~to consider the resubmitted rule. The period of time between~~
13 ~~withdrawal and resubmission of the rule is not counted toward the~~
14 ~~63-day limit for rule consideration described in subsection~~
15 ~~(4)(b).~~

16 ~~(b) Without permission of the chair and alternate chair, the~~
17 ~~agency may withdraw the rule and resubmit it. If permission to~~
18 ~~withdraw is not granted, a new and untolled 21-day time period~~
19 ~~described in subsection (1) shall begin upon resubmission of the~~
20 ~~rule to the committee for consideration.~~

21 (9) ~~(8)~~ Subsections (1) through ~~(5)~~ (6) do not apply to
22 rules adopted under sections 33, 44, and 48.