

HOUSE BILL No. 5812

March 1, 2006, Introduced by Reps. Huizenga, Green and Stahl and referred to the Committee on Commerce.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 39, 40, 43, 45, and 53 (MCL 24.239, 24.240, 24.243, 24.245, and 24.253), sections 39 and 53 as amended by 2004 PA 23, section 40 as amended by 1999 PA 262, section 43 as amended by 1989 PA 288, and section 45 as amended by 2004 PA 491.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 39. (1) Before initiating any changes or additions to
2 rules, an agency shall electronically file with the **STATE** office of
3 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** a request for
4 rule-making in a format prescribed by the **STATE** office of
5 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**. The request

1 for rule-making shall include the following:

2 (a) The state or federal statutory or regulatory basis for the
3 rule.

4 (b) The problem the rule intends to address.

5 (c) An assessment of the significance of the problem.

6 (D) IF APPLICABLE, THE DECISION RECORD.

7 (2) IN THE CASE WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR
8 COMMENTS BY ANY ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED
9 BY LAW, THE ADVISORY COMMITTEE OR ENTITY SHALL ISSUE TO THE AGENCY
10 A DECISION RECORD REGARDING ANY ACTION OR DISCUSSION REGARDING THE
11 REQUEST FOR RULE-MAKING. THE DECISION RECORD SHALL CONTAIN ALL OF
12 THE FOLLOWING, TO BE POSTED ON THE AGENCY WEBSITE NOT LESS THAN 24
13 MONTHS BEFORE THE REQUEST FOR RULE-MAKING IS SUBMITTED:

14 (A) THE MINUTES OF ALL MEETINGS RELATED TO THE REQUEST FOR
15 RULE-MAKING.

16 (B) THE VOTES OF MEMBERS.

17 (C) THE DISCUSSION AND REASONING IN SUPPORT OF THE DECISION.

18 (3) ~~-(2)-~~ An agency shall not proceed with the processing of a
19 rule outlined in this chapter unless the **STATE** office of
20 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** has approved
21 the request for rule-making. **THE STATE OFFICE OF ADMINISTRATIVE**
22 **HEARINGS AND RULES IS NOT REQUIRED TO APPROVE A PROPOSED RULE AND**
23 **SHALL DO SO ONLY AFTER IT HAS INDICATED IN ITS RESPONSE TO THE**
24 **REQUEST FOR RULE-MAKING SUBMITTED BY AN AGENCY THAT THERE ARE**
25 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
26 **REQUEST FOR RULE-MAKING.**

27 (4) ~~-(3)-~~ The **STATE** office of ~~regulatory reform~~

1 **ADMINISTRATIVE HEARINGS AND RULES** shall record the receipt of all
2 requests for rule-making on the internet and shall make electronic
3 or paper copies of approved requests for rule-making available to
4 members of the general public upon request. **THE STATE OFFICE OF**
5 **ADMINISTRATIVE HEARINGS AND RULES SHALL ISSUE A WRITTEN OR**
6 **ELECTRONIC RESPONSE TO THE REQUEST FOR RULE-MAKING THAT**
7 **SPECIFICALLY ADDRESSES THE ISSUES OF WHETHER THE REQUEST HAS**
8 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
9 **REQUEST FOR RULE-MAKING.**

10 (5) ~~(4)~~ The **STATE** office of ~~regulatory reform~~
11 **ADMINISTRATIVE HEARINGS AND RULES** shall immediately make available
12 to the committee electronic copies of the request for rule-making
13 submitted to the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
14 **HEARINGS AND RULES**. On a weekly basis, the **STATE** office of
15 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall
16 electronically provide to the committee a listing of all requests
17 for rule-making approved or denied during the previous week. The
18 committee shall electronically provide a copy of the approved and
19 denied requests for rule-making, not later than the next business
20 day after receipt of the notice from the **STATE** office of
21 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**, to members of
22 the committee and to members of the standing committees of the
23 senate and house of representatives that deal with the subject
24 matter of the proposed rule.

25 Sec. 40. (1) When an agency proposes to adopt a rule that will
26 apply to a small business and the rule will have a disproportionate
27 impact on small businesses because of the size of those businesses,

1 the agency proposing to adopt the rule shall reduce the economic
2 impact of the rule on small businesses by doing ~~1 or more~~ **ALL** of
3 the following when it is lawful ~~and feasible~~ in meeting the
4 objectives of the act authorizing the promulgation of the rule:

5 **(A) IDENTIFY AND ESTIMATE THE NUMBER OF SMALL BUSINESSES**
6 **AFFECTED BY THE PROPOSED RULE AND ITS PROBABLE EFFECT ON SMALL**
7 **BUSINESSES.**

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

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

16 **(D) ~~(e)~~ Establish performance rather than design standards.**
17 **~~when appropriate.~~**

18 **(E) ~~(d)~~ Exempt small businesses from any or all of the**
19 **requirements of the rule.**

20 **(2) AN AGENCY SHALL ATTACH TO THE REQUEST FOR RULE-MAKING A**
21 **REGULATORY FLEXIBILITY STATEMENT ADDRESSING THE FOLLOWING METHODS**
22 **OF REDUCING THE REGULATORY IMPACT OF A PROPOSED RULE UPON SMALL**
23 **BUSINESSES:**

24 **(A) THE ESTABLISHMENT OF LESS STRINGENT COMPLIANCE OR**
25 **REPORTING REQUIREMENTS.**

26 **(B) THE ESTABLISHMENT OF LESS STRINGENT SCHEDULES OR DEADLINES**
27 **FOR COMPLIANCE OR REPORTING REQUIREMENTS.**

1 (C) THE CONSOLIDATION OR SIMPLIFICATION OF COMPLIANCE OR
2 REPORTING REQUIREMENTS.

3 (D) THE ESTABLISHMENT OF PERFORMANCE STANDARDS TO REPLACE
4 DESIGN OR OPERATIONAL STANDARDS REQUIRED IN THE PROPOSED RULE.

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

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

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

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

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

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

20 Sec. 43. (1) Except in the case of an emergency rule
21 promulgated in the manner described in section 48, a rule is not
22 valid unless processed in compliance with ~~section 42~~ **SECTIONS 39,**
23 **40, 42, AND 45(3)** and unless in substantial compliance with section
24 41(2), (3), (4), and (5).

25 (2) A proceeding to contest **THE VALIDITY OF THE PROCESSING OF**
26 a rule on the ground of noncompliance with the requirements of
27 sections **39, 40, 41, and 42 OR SECTION 45(3)** shall be commenced

1 within 2 years after the effective date of the rule.

2 Sec. 45. (1) Except as otherwise provided for in this
3 subsection, the agency shall submit the proposed rule to the
4 legislative service bureau for its formal certification. The
5 submission to the legislative service bureau for formal
6 certification shall be in the form of electronic transmission. If
7 requested by the legislative service bureau, the **STATE** office of
8 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also
9 transmit up to 4 paper copies of the proposed rule. The legislative
10 service bureau shall promptly issue a certificate of approval
11 indicating a determination that a proposed rule is proper as to all
12 matters of form, classification, and arrangement. If the
13 legislative service bureau fails to issue a certificate of approval
14 within 21 calendar days after receipt of the submission for formal
15 certification, the **STATE** office of ~~regulatory reform~~
16 **ADMINISTRATIVE HEARINGS AND RULES** may issue a certificate of
17 approval. If the submission to the legislative service bureau is
18 returned by the legislative service bureau to the agency before the
19 expiration of the 21-calendar-day time period, the 21-calendar-day
20 time period is tolled until the rule is resubmitted by the agency.
21 The remainder of the 21-calendar-day time period or 6 calendar
22 days, whichever is longer, shall be available for consideration by
23 the legislative service bureau for formal certification of the
24 rule. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
25 **HEARINGS AND RULES** may approve a proposed rule if it considers the
26 proposed rule to be legal **AND APPROPRIATE**.

27 (2) Except as provided in subsection (6), after notice is

1 given as provided in this act and before the agency proposing the
2 rule has formally adopted the rule, the agency shall prepare an
3 agency report containing a synopsis of the comments contained in
4 the public hearing record and a copy of the **REQUEST FOR RULE-**
5 **MAKING, THE REGULATORY FLEXIBILITY STATEMENT, AND THE** regulatory
6 impact statement required under subsection (3). In the report, the
7 agency shall describe any changes in the proposed rules that were
8 made by the agency after the public hearing. The **STATE** office of
9 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall transmit
10 by notice of transmittal to the committee copies of the rule, the
11 agency reports **CONTAINING THE REQUEST FOR RULE-MAKING AND THE**
12 **REGULATORY FLEXIBILITY STATEMENT**, a copy of the regulatory impact
13 statement, and certificates of approval from the legislative
14 service bureau and the **STATE** office of ~~regulatory reform~~
15 **ADMINISTRATIVE HEARINGS AND RULES**. The **STATE** office of ~~regulatory~~
16 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also electronically
17 submit a copy of the rule, any agency reports required under this
18 subsection, any regulatory impact statements required under
19 subsection (3), and any certificates of approval required under
20 subsection (1) to the committee. The agency shall electronically
21 transmit to the committee the records described in this subsection
22 within 1 year after the date of the last public hearing on the
23 proposed rule unless the proposed rule is a resubmission under
24 section 45a(7).

25 (3) Except for a rule promulgated under sections 33, 44, and
26 48, the agency shall prepare and include with the notice of
27 transmittal **THE REQUEST FOR RULE-MAKING AND THE RESPONSE FROM THE**

1 STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES, A SMALL BUSINESS
2 IMPACT STATEMENT PREPARED UNDER SECTION 40(1), A REGULATORY
3 FLEXIBILITY STATEMENT PREPARED UNDER SECTION 40(2), AND a
4 regulatory impact statement. ~~containing~~ THE REGULATORY IMPACT
5 STATEMENT SHALL CONTAIN all of the following information:

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

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

11 (c) An identification of the harm resulting from the behavior
12 that the rule is designed to alter and the likelihood that the harm
13 will occur in the absence of the rule.

14 (d) An estimate of the change in the frequency of the targeted
15 behavior expected from the rule.

16 (e) An identification of the businesses, groups, or
17 individuals who will be directly affected by, bear the cost of, or
18 directly benefit from the rule.

19 (f) An identification of any reasonable alternatives to
20 regulation pursuant to the proposed rule that would achieve the
21 same or similar goals.

22 (g) A discussion of the feasibility of establishing a
23 regulatory program similar to that proposed in the rule that would
24 operate through market-based mechanisms.

25 (h) An estimate of the cost of rule imposition on the agency
26 promulgating the rule.

27 (i) An estimate of the actual statewide compliance costs of

1 the proposed rule on individuals.

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

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

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

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

12 (n) An identification of the nature and estimated cost of any
13 legal consulting and accounting services that small businesses
14 would incur in complying with the proposed rule.

15 (o) An estimate of the ability of small businesses to absorb
16 the costs estimated under subdivisions (l) through (n) without
17 suffering economic harm and without adversely affecting competition
18 in the marketplace.

19 (p) An estimate of the cost, if any, to the agency of
20 administering or enforcing a rule that exempts or sets lesser
21 standards for compliance by small businesses.

22 (q) An identification of the impact on the public interest of
23 exempting or setting lesser standards of compliance for small
24 businesses.

25 (r) A statement describing the manner in which the agency
26 reduced the economic impact of the rule on small businesses. ~~or a~~
27 ~~statement describing the reasons such a reduction was not feasible.~~

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

3 (t) An estimate of the primary and direct benefits of the
4 rule.

5 (u) An estimate of any cost reductions to businesses,
6 individuals, groups of individuals, or governmental units as a
7 result of the rule.

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

10 (w) An estimate of any secondary or indirect benefits of the
11 rule.

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

14 (y) Any other information required by the **STATE** office of
15 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**.

16 (4) The agency shall electronically transmit the regulatory
17 impact statement required under subsection (3) to the **STATE** office
18 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** at least
19 28 days before the public hearing required pursuant to section 42.
20 Before the public hearing can be held, the regulatory impact
21 statement must be reviewed and approved by the **STATE** office of
22 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**. The agency
23 shall also electronically transmit a copy of the regulatory impact
24 statement to the committee before the public hearing and the agency
25 shall make copies available to the public at the public hearing.
26 **THE AGENCY SHALL POST THE REGULATORY IMPACT STATEMENT ON ITS**
27 **WEBSITE FOR A PERIOD OF AT LEAST 24 MONTHS.**

1 (5) The committee shall electronically transmit to the senate
2 fiscal agency and the house fiscal agency a copy of each rule and
3 regulatory impact statement filed with the committee, as well as a
4 copy of the agenda identifying the proposed rules to be considered
5 by the committee. The senate fiscal agency and the house fiscal
6 agency shall analyze each proposed rule for possible fiscal
7 implications that, if the rule were adopted, would result in
8 additional appropriations in the current fiscal year or commit the
9 legislature to an appropriation in a future fiscal year. The senate
10 fiscal agency and the house fiscal agency shall electronically
11 report their findings to the senate and house appropriations
12 committees and to the committee before the date of consideration of
13 the proposed rule by the committee.

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

16 Sec. 53. (1) Each agency shall prepare an annual regulatory
17 plan that reviews the agency's rules. The annual regulatory plan
18 shall be electronically transmitted to the **STATE** office of
19 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**.

20 (2) In completing the annual regulatory plan required by this
21 section, the agency shall identify the rules it reasonably expects
22 to process in the next year, the mandatory statutory rule authority
23 it has not exercised, and the rules it expects to rescind in the
24 next year. **THE AGENCY SHALL ALSO ISSUE A REPORT STATING OR**
25 **DESCRIBING ALL EXISTING RULES PROMULGATED BY THE AGENCY AND SHALL**
26 **INDICATE WHETHER THE RULES SHOULD BE CONTINUED, CHANGED, OR**
27 **RESCINDED CONSIDERING THE STATUTORY AND PUBLIC POLICY PURPOSE OF**

1 THE RULES.

2 ~~—— (3) The annual regulatory plans completed pursuant to this~~
3 ~~section are advisory only and do not otherwise bind the agency or~~
4 ~~in any way prevent additional action.~~

5 (3) WITHIN 5 YEARS AFTER THE EFFECTIVE DATE OF ANY RULES
6 PROMULGATED BY AN AGENCY OR 4 YEARS AFTER THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SUBSECTION FOR RULES IN EFFECT ON
8 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
9 SUBSECTION, AN AGENCY AND THE APPROPRIATIONS COMMITTEES OF THE
10 SENATE AND THE HOUSE OF REPRESENTATIVES SHALL REVIEW EACH SET OF
11 RULES TO DETERMINE WHETHER THERE IS ANY INCREASED IMPACT ON SMALL
12 BUSINESSES SINCE THE EFFECTIVE DATE OF THOSE RULES. THE REVIEW
13 SHALL STATE THE FOLLOWING:

14 (A) THE CONTINUED NEED FOR THE RULES.

15 (B) THE NATURE OF ANY COMPLAINTS OR COMMENTS RECEIVED FROM THE
16 PUBLIC CONCERNING THE RULES.

17 (C) THE COMPLEXITY OF COMPLYING WITH THE RULES.

18 (D) THE EXTENT TO WHICH THE RULES CONFLICT WITH OR DUPLICATE
19 SIMILAR RULES OR REGULATIONS ADOPTED BY THE FEDERAL GOVERNMENT OR
20 LOCAL UNITS OF GOVERNMENT.

21 (E) THE DATE OF THE LAST EVALUATION OF THE RULES AND THE
22 DEGREE, IF ANY, TO WHICH TECHNOLOGY, ECONOMIC CONDITIONS, OR OTHER
23 FACTORS HAVE CHANGED REGULATORY ACTIVITY COVERED BY THE RULES. THE
24 AGENCY SHALL ALSO ISSUE A REPORT STATING OR DESCRIBING ALL EXISTING
25 RULES PROMULGATED BY THE AGENCY AND SHALL INDICATE WHETHER THE
26 RULES SHOULD BE CONTINUED, CHANGED, OR RESCINDED CONSIDERING THE
27 STATUTORY AND PUBLIC POLICY PURPOSE OF THE RULES.

1 (4) Annual regulatory plans completed under subsection (1)
2 shall be electronically filed with the **STATE** office of ~~regulatory~~
3 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES** by July 1 of each year.
4 After the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
5 **HEARINGS AND RULES** approves the plan for review, the **STATE** office
6 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall
7 electronically provide a copy of the plan of review to the
8 committee. The committee shall electronically provide a copy of
9 each agency plan of review, not later than the next business day
10 after receipt of the plan of review from the **STATE** office of
11 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**, to members of
12 the committee and to members of the standing committees of the
13 senate and house of representatives that deal with the subject
14 matter of rules the agency may propose.