

HOUSE BILL No. 5936

March 30, 2006, Introduced by Reps. Amos, Taub, Robertson, Gosselin, Farhat, Booher, LaJoy, Elsenheimer, Pastor, Palsrok, Stakoe, Hildenbrand, Moore, Wenke, Stahl, Nofs, Stewart, Newell, Brandenburg, Caswell, Hummel, Kahn, David Law, Mortimer, Ball, Schuitmaker, Drolet, Palmer, Huizenga, Hoogendyk, Ward, Jones, Green, Caul, Baxter, Marleau, Pavlov, Vander Veen, Garfield, Kooiman, Acciavatti and Moolenaar and referred to the Committee on Commerce.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 28, 81, 85, 86, and 106 (MCL 24.228, 24.281, 24.285, 24.286, and 24.306), section 28 as amended by 2004 PA 23 and section 85 as amended by 1993 PA 83, and by adding section 107.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 28. (1) Before the adoption of a standard form contract
 2 that would have been considered a rule but for the exemption from
 3 rule-making under section 7(p) or a policy exempt from rule-making
 4 under section 7(q), an agency shall give electronic notice of the
 5 proposed standard form contract or policy to the committee and the
 6 **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND**
 7 **RULES**. The committee shall provide an electronic copy of the notice

1 not later than the next business day after receipt of the
2 electronic notice from the agency to members of the committee and
3 to members of the standing committees of the senate and house of
4 representatives that deal with the subject matter of the proposed
5 standard form contract or policy.

6 (2) The electronic notice required by subsection (1) shall
7 include all of the following:

8 (a) A statement of the terms of substance of the proposed
9 standard form contract or policy, a description of the subjects and
10 issues involved, and the proposed effective date of the standard
11 form contract or policy.

12 (b) A statement that the addressee may express any views or
13 arguments regarding the proposed standard form contract or policy
14 or the standard form contract's or policy's effect on a person.

15 (c) The address to which comments may be sent and the date by
16 which the comments shall be mailed or electronically transmitted,
17 which date shall not be less than 35 days from the date of the
18 mailing or electronic transmittal of the notice.

19 (d) A reference to the specific statutory provision under
20 which the standard form contract or policy is issued.

21 **(E) A REGULATORY IMPACT STATEMENT ADDRESSING THE ITEMS**
22 **DESCRIBED IN SECTION 45(3).**

23 (3) If the value of a proposed standard form contract exempt
24 from rule-making under section 7(p) is \$10,000,000.00 or more, the
25 electronic notice required under subsection (1) shall include an
26 electronic copy of the proposed standard form contract. If the
27 value of the proposed standard form contract exempt from rule-

1 making under section 7(p) is less than \$10,000,000.00, the agency
2 shall provide an electronic or paper copy of the proposed standard
3 form contract or policy to any legislator requesting a copy.

4 Sec. 81. (1) When the official or a majority of the officials
5 of the agency who are to make a final decision have not heard a
6 contested case or read the record, the decision, if adverse to a
7 party to the proceeding other than the agency itself, shall not be
8 made until a proposal for decision is served on the parties, and an
9 opportunity is given to each party adversely affected to file
10 exceptions and present written arguments to the officials who are
11 to make the decision. Oral argument may be permitted with consent
12 of the agency.

13 (2) The proposal for decision shall contain a statement of the
14 reasons therefor and of each issue of fact and law necessary to the
15 proposed decision, prepared by a person who conducted the hearing
16 or who has read the record.

17 (3) The decision, without further proceedings, shall become
18 the final decision of the agency in the absence of the filing of
19 exceptions or review by action of the agency within the time
20 provided by rule **OR 30 DAYS AFTER THE HEARING IS COMPLETED AND**
21 **OTHERWISE IN COMPLIANCE WITH THE PRESCRIPTIONS OF SUBSECTIONS (4)**
22 **AND (5). AN AGENCY OR THE HEARING OFFICER MAY EXCEED THE TIME**
23 **PERIOD DESCRIBED IN THIS SUBSECTION UPON A PRESENTATION ON THE**
24 **RECORD OF EXTRAORDINARY CIRCUMSTANCES.**

25 (4) **ONCE THE PROPOSAL FOR DECISION IS COMPLETED, THE AGENCY**
26 **HAS NOT MORE THAN 30 DAYS TO MAKE ITS FINAL DECISION OR ORDER.**

27 (5) **IF THE AGENCY DISTINGUISHES CERTAIN PRIOR AGENCY DECISIONS**

1 IN IDENTICAL OR SUBSTANTIALLY SIMILAR SUBJECT MATTER AREAS, A
2 FACTUAL AND LEGAL BASIS SHALL BE PRESENTED.

3 (6) IF THE AGENCY DOES NOT COMPLY WITH THE TIME PERIODS
4 DESCRIBED IN SUBSECTIONS (3) AND (4), THE AGENCY IS CONSIDERED IN
5 DEFAULT. UNDER SUCH CIRCUMSTANCES, THE AGENCY SHALL ENTER A
6 JUDGMENT IN FAVOR OF THE RESPONDENT. THE ONLY EXCEPTIONS TO THE
7 TIME PERIODS CONCERNING ENTRY OF JUDGMENTS IN FAVOR OF THE
8 RESPONDENTS ARE WAIVER BY THE RESPONDENT OR AGREEMENT OF ALL THE
9 PARTIES AFFECTED BY THE PROPOSAL FOR DECISION, OR BOTH.

10 (7) On appeal from or review of a proposal of decision the
11 agency, except as it may limit the issue upon notice or by rule,
12 shall have all the powers which it would have if it had presided at
13 the hearing.

14 (8) ~~(4)~~ The parties, by written stipulation or at the
15 hearing, may waive compliance with this section.

16 (9) IF AN AGENCY ENTERS A FINAL DECISION AND, UPON JUDICIAL
17 REVIEW, THAT AGENCY DECISION IS OVERTURNED OR REVERSED BECAUSE IT
18 IS NOT SUPPORTED BY STATUTE OR RULE, THE COURT SHALL AWARD RELATED
19 LITIGATION COSTS AND ATTORNEY FEES TO THE LITIGANTS WHO PREVAIL IN
20 OBTAINING RELIEF FROM THAT AGENCY DECISION.

21 Sec. 85. (1) A final decision or order of an agency in a
22 contested case shall be made, within ~~a reasonable period~~ **THE TIME**
23 **PERIOD PRESCRIBED BY SECTION 81**, in writing or stated in the record
24 and shall include findings of fact and conclusions of law separated
25 into sections captioned or entitled "findings of fact" and
26 "conclusions of law", respectively.

27 (2) Findings of fact shall be based exclusively on the

1 evidence and on matters officially noticed. Findings of fact, if
2 set forth in statutory language, shall be accompanied by a concise
3 and explicit statement of the underlying facts supporting them. If
4 a party submits proposed findings of fact that would control the
5 decision or order, the decision or order shall include a ruling
6 upon each proposed finding.

7 (3) Each conclusion of law shall be supported by authority or
8 reasoned opinion. A decision or order shall not be made except upon
9 consideration of the record as a whole or a portion of the record
10 as may be cited by any party to the proceeding and as supported by
11 and in accordance with the competent, material, and substantial
12 evidence.

13 (4) A copy of the decision or order shall be delivered or
14 mailed immediately to each party and to his or her attorney of
15 record.

16 Sec. 86. (1) An agency shall prepare an official record of a
17 hearing which shall include:

18 (a) Notices, pleadings, motions, and intermediate rulings.

19 (b) Questions and offers of proof, objections and rulings
20 thereon.

21 (c) Evidence presented.

22 (d) Matters officially noticed, except matters so obvious that
23 a statement of them would serve no useful purpose.

24 (e) Proposed findings and exceptions.

25 (f) Any decision, opinion, order, or report by the officer
26 presiding at the hearing and by the agency.

27 (G) **ANY ENTRY OF JUDGMENT FOR A RESPONDENT.**

1 (2) Oral proceedings at which evidence is presented shall be
2 recorded, but need not be transcribed unless requested by a party
3 who shall pay for the transcription of the portion requested except
4 as otherwise provided by law.

5 Sec. 106. (1) Except when a statute or the constitution
6 provides for a different scope of review, the court shall hold
7 unlawful and set aside a decision or order of an agency if
8 substantial rights of the petitioner have been prejudiced because
9 the decision or order is any of the following:

10 (a) In violation of the constitution or a statute.

11 (b) In excess of the statutory authority or jurisdiction of
12 the agency.

13 (c) Made upon unlawful procedure resulting in material
14 prejudice to a party. **A COURT SHALL REVERSE AND SET ASIDE AN AGENCY**
15 **DECISION WHERE IT IS MADE UPON AN UNLAWFUL PROCEDURE OR DID NOT**
16 **CONFORM ITS PROCEDURES TO THE REQUIREMENTS OF LAW INCLUDING THE**
17 **REQUIREMENTS OF THIS ACT, UNLESS THE AGENCY CAN DEMONSTRATE BY A**
18 **PREPONDERANCE OF EVIDENCE THAT THE FAILURE TO CONFORM TO THE**
19 **PROCEDURE REQUIRED BY LAW DID NOT PREJUDICE THE RIGHTS OF ANY PARTY**
20 **TO THE PROCEEDING.**

21 (d) Not supported by competent, material, and substantial
22 evidence on the whole record. **IN DETERMINING WHETHER AN AGENCY**
23 **DECISION IS SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL**
24 **EVIDENCE ON THE RECORD, THE COURT SHALL DO THE FOLLOWING:**

25 (i) **EXAMINE THE AGENCY'S FINDINGS OF FACT TO DETERMINE WHETHER**
26 **EACH FINDING OF FACT AT ISSUE BEFORE THE COURT IS SUPPORTED BY**
27 **EVIDENCE IN THE RECORD OR REASONABLE INFERENCES FROM IDENTIFIED**

1 TESTIMONY OR EXHIBITS.

2 (ii) REVIEW THE EVIDENCE CITED BY THE AGGRIEVED PERSON WITH
3 RESPECT TO EACH SUCH FINDING OF FACT.

4 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
5 exercise of discretion. IN DETERMINING WHETHER AN AGENCY HAS ACTED
6 ARBITRARILY OR CAPRICIOUSLY OR ABUSED ITS DISCRETION, A COURT SHALL
7 DETERMINE WHETHER THE AGENCY'S DECISION IS REASONABLE, MEASURED,
8 AND PROPORTIONATE. IN DETERMINING WHETHER AN AGENCY'S DECISION IS
9 REASONABLE, MEASURED, AND PROPORTIONATE, THE COURT SHALL DETERMINE
10 WHETHER THE AGENCY ARTICULATED A SATISFACTORY EXPLANATION FOR ITS
11 ACTION, INCLUDING A RATIONAL CONNECTION BETWEEN THE FACTS FOUND,
12 THE CHOICES AVAILABLE TO THE AGENCY, AND THE CHOICE MADE.

13 (f) Affected by other substantial and material error of law.

14 (2) The court, as appropriate, may affirm, reverse, or modify
15 the decision or order or remand the case for further proceedings.
16 IN DETERMINING WHETHER TO REVERSE A DECISION OR ORDER OR WHETHER TO
17 REMAND A CASE FOR FURTHER PROCEEDINGS, THE COURT SHALL CONSIDER AND
18 GIVE WEIGHT TO THE FOLLOWING:

19 (A) THE NATURE AND EXTENT OF ANY VIOLATIONS OF THE AGGRIEVED
20 PERSON'S PROCEDURAL RIGHTS UNDER THE CONSTITUTION OR STATUTES,
21 INCLUDING THIS ACT.

22 (B) THE REASONABLY LIKELY FEES AND COSTS THAT THE AGGRIEVED
23 PERSON HAS INCURRED IN PROCEEDINGS BEFORE THE AGENCY TO DATE.

24 (C) THE REASONABLY LIKELY FEES AND COSTS THAT WILL BE BORNE IN
25 FURTHER PROCEEDINGS.

26 (D) THE AMOUNT AT STAKE AND THE PUBLIC INTEREST IN THE
27 PROCEEDINGS.

1 SEC. 107. IN REVIEWING RULES, BULLETINS, GUIDELINES,
2 INTERPRETIVE STATEMENTS, DECLARATORY RULINGS, FORMS WITH
3 INSTRUCTIONS, FINDINGS, RULINGS, AND ORDERS, THE COURTS SHALL
4 DETERMINE WHETHER IN PROMULGATING RULES OR ISSUING THE BULLETINS,
5 GUIDELINES, INTERPRETIVE STATEMENTS, AND FORMS WITH INSTRUCTIONS OR
6 IN MAKING SUCH FINDINGS, RULINGS, AND ORDERS THE AGENCY EFFECTUATED
7 THE OBJECT OF THIS SECTION TO REQUIRE AGENCIES TO GIVE DUE
8 CONSIDERATION TO REDUCING THE ADVERSE IMPACT OF ITS ORDERS,
9 BULLETINS, GUIDELINES, INTERPRETIVE STATEMENTS, DECLARATORY
10 RULINGS, AND FORMS WITH INSTRUCTIONS ON SMALL BUSINESSES WITH THE
11 OBJECTIVE OF ENCOURAGING AND FOSTERING THE GROWTH OF SMALL
12 BUSINESSES IN THIS STATE AND THE ELIMINATION OF UNNECESSARY
13 REGULATORY BURDENS ON SMALL BUSINESSES OF THIS STATE.