

HOUSE BILL No. 5971

April 25, 2006, Introduced by Reps. Acciavatti, Ball, Gosselin, Taub and Schuitmaker and referred to the Committee on Judiciary.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 7, 31, 38, and 44 (MCL 24.207, 24.231, 24.238, and 24.244), section 7 as amended by 2000 PA 216, section 31 as amended by 1989 PA 288, and section 44 as amended by 2004 PA 23.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. "Rule" means an agency regulation, statement,
2 standard, policy, ruling, or instruction of general applicability
3 that implements or applies law enforced or administered by the
4 agency, or that prescribes the organization, procedure, or practice
5 of the agency, including the amendment, suspension, or rescission
6 of the law enforced or administered by the agency. Rule does not
7 include any of the following:

8 (a) A resolution or order of the state administrative board.

1 (b) A formal opinion of the attorney general.

2 (c) A rule or order establishing or fixing rates or tariffs.

3 (d) A rule or order pertaining to game and fish and
4 promulgated under parts 401, 411, and 487 of the natural resources
5 and environmental protection act, 1994 PA 451, MCL 324.40101 to
6 324.40119, 324.41101 to 324.41105, and 324.48701 to 324.48740.

7 (e) A rule relating to the use of streets or highways, the
8 substance of which is indicated to the public by means of signs or
9 signals.

10 (f) A determination, decision, or order in a contested case.

11 (g) An intergovernmental, interagency, or intra-agency
12 memorandum, directive, or communication that does not affect the
13 rights of, or procedures and practices available to, the public.

14 (h) A form with instructions, an interpretive statement, a
15 guideline, **A POLICY DIRECTIVE**, an informational pamphlet, or other
16 material that in itself does not have the force and effect of law
17 but is merely explanatory.

18 (i) A declaratory ruling or other disposition of a particular
19 matter as applied to a specific set of facts involved.

20 (j) A decision by an agency to exercise or not to exercise a
21 permissive statutory power, although private rights or interests
22 are affected.

23 ~~—— (k) Unless another statute requires a rule to be promulgated~~
24 ~~under this act, a rule or policy that only concerns the inmates of~~
25 ~~a state correctional facility and does not directly affect other~~
26 ~~members of the public, except that a rule that only concerns~~
27 ~~inmates which was promulgated before December 4, 1986, shall be~~

1 ~~considered a rule and shall remain in effect until rescinded but~~
 2 ~~shall not be amended. As used in this subdivision, "state~~
 3 ~~correctional facility" means a facility or institution that houses~~
 4 ~~an inmate population under the jurisdiction of the department of~~
 5 ~~corrections.~~

6 **(K)** ~~-(l)-~~ A rule establishing special local watercraft controls
 7 promulgated under former 1967 PA 303. A rule described in this
 8 subdivision may be rescinded as provided in section 80113(2) of the
 9 natural resources and environmental protection act, 1994 PA 451,
 10 MCL 324.80113.

11 **(l)** ~~-(m)-~~ All of the following, after final approval by the
 12 certificate of need commission ~~or the statewide health~~
 13 ~~coordinating council~~ under section 22215 ~~or 22217~~ of the public
 14 health code, 1978 PA 368, MCL 333.22215: ~~and 333.22217:~~

15 (i) The designation, deletion, or revision of covered medical
 16 equipment and covered clinical services.

17 (ii) Certificate of need review standards.

18 (iii) Data reporting requirements and criteria for determining
 19 health facility viability.

20 (iv) Standards used by the department of community health in
 21 designating a regional certificate of need review agency.

22 (v) The modification of the 100 licensed bed limitation for
 23 short-term nursing care programs set forth in section 22210 of the
 24 public health code, 1978 PA 368, MCL 333.22210.

25 **(M)** ~~-(n)-~~ A policy developed by the family independence agency
 26 under section 6(3) of the social welfare act, 1939 PA ~~250~~ **280**,
 27 MCL 400.6, setting income and asset limits, types of income and

1 assets to be considered for eligibility, and payment standards for
2 administration of assistance programs under that act.

3 (N) ~~(e)~~ A policy developed by the family independence agency
4 under section 6(4) of the social welfare act, 1939 PA 280, MCL
5 400.6, to implement requirements that are mandated by federal
6 statute or regulations as a condition of receipt of federal funds.

7 (O) ~~(p)~~ The provisions of an agency's contract with a public
8 or private entity including, but not limited to, the provisions of
9 an agency's standard form contract.

10 (P) ~~(q)~~ A policy developed by the department of community
11 health under the authority granted in section 111a of the social
12 welfare act, 1939 PA 280, MCL 400.111a, to implement policies and
13 procedures necessary to operate its health care programs in
14 accordance with an approved state plan or in compliance with state
15 statute.

16 Sec. 31. (1) Rules ~~which~~ **THAT** became effective before July
17 1, 1970 continue in effect until amended or rescinded.

18 (2) When a law authorizing or directing an agency to
19 promulgate rules is repealed and substantially the same rule-making
20 power or duty is vested in the same or a successor agency by a new
21 provision of law or the function of the agency to which the rules
22 are related is transferred to another agency, by law or executive
23 order, the existing rules of the original agency relating ~~thereto~~
24 **TO THAT AGENCY** continue in effect until amended or rescinded, and
25 the agency or successor agency may rescind any rule relating to the
26 function. When a law creating an agency or authorizing or directing
27 it to promulgate rules is repealed or the agency is abolished and

1 substantially the same rule-making power or duty is not vested in
2 the same or a successor agency by a new provision of law and the
3 function of the agency to which the rules are related is not
4 transferred to another agency, the existing applicable rules of the
5 original agency are automatically rescinded as of the effective
6 date of the repeal of such law or the abolition of the agency.

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

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

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

16 Sec. 38. ~~A~~ **EXCEPT FOR A RULE INVOLVING A STATE CORRECTIONAL**
17 **FACILITY AS DESCRIBED IN SECTION 44(2)(B),** A person may request an
18 agency to promulgate a rule. Within 90 days after filing of a
19 request, the agency shall initiate the processing of a rule or
20 issue a concise written statement of its principal reasons for
21 denial of the request. The denial of a request is not subject to
22 judicial review.

23 Sec. 44. (1) Sections 41 and 42 do not apply to an amendment
24 or rescission of a rule that is obsolete or superseded, or that is
25 required to make obviously needed corrections to make the rule
26 conform to an amended or new statute or to accomplish any other
27 solely formal purpose, if a statement to that effect is included in

1 the legislative service bureau certificate of approval of the rule.

2 (2) Sections 41 and 42 do not apply to ~~a~~ **THE FOLLOWING:**

3 **(A) A** rule that is promulgated under the Michigan occupational
4 safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, that
5 is substantially similar to an existing federal standard that has
6 been adopted or promulgated under the occupational safety and
7 health act of 1970, Public Law 91-596, 84 Stat. 1590. ~~However,~~
8 ~~notice~~

9 **(B) A RULE OR POLICY THAT ONLY CONCERNS THE INMATES OF A STATE**
10 **CORRECTIONAL FACILITY AND DOES NOT DIRECTLY AFFECT OTHER MEMBERS OF**
11 **THE PUBLIC. AS USED IN THIS SUBDIVISION, "STATE CORRECTIONAL**
12 **FACILITY" MEANS A FACILITY OR INSTITUTION THAT HOUSES AN INMATE**
13 **POPULATION UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONS.**

14 **(3) NOTICE** of the proposed rule **PROMULGATED UNDER SUBSECTION**
15 **(2)** shall be published in the Michigan register at least 35 days
16 before the submission of the rule to the secretary of state
17 pursuant to section 46(1). A reasonable period, not to exceed 21
18 days, shall be provided for the submission of written or electronic
19 comments and views following publication in the Michigan register.

20 **(4) ~~(3) For purposes of subsection (2)~~ AS USED IN THIS**
21 **SECTION,** "substantially similar" means identical, with the
22 exception of style or format differences needed to conform to this
23 or other state laws, as determined by the **STATE** office of
24 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** pursuant to
25 section 45(1).