

**SUBSTITUTE FOR  
HOUSE BILL NO. 4205**

A bill to amend 1969 PA 306, entitled  
"Administrative procedures act of 1969,"  
by amending sections 32 and 45 (MCL 24.232 and 24.245), section 32  
as amended by 2011 PA 270 and section 45 as amended by 2016 PA 513.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 32. (1) Definitions of words and phrases and rules of  
2       construction prescribed in any statute that are made applicable to  
3       all statutes of this state also apply to rules unless clearly  
4       indicated to the contrary.
- 5       (2) A rule or exception to a rule ~~shall~~**MUST** not discriminate  
6       in favor of or against any person. A person affected by a rule is  
7       entitled to the same benefits as any other person under the same or  
8       similar circumstances.
- 9       (3) The violation of a rule is a crime ~~when so~~**IF** provided by

statute. ~~A-UNLESS PROVIDED BY STATUTE, A~~ rule ~~shall-MUST~~ not make  
**DESIGNATE** an act or omission ~~to act-AS~~ a crime or prescribe a  
 criminal penalty for violation of a rule.

(4) An agency may adopt ~~by~~ reference in its rules and  
 without publishing the adopted matter in full ~~all~~ or any part of  
 a code, standard, or regulation that has been adopted by an agency  
 of the United States or by a nationally recognized organization or  
 association. The reference ~~shall-MUST~~ fully identify the adopted  
 matter by date and otherwise. The reference ~~shall-MUST~~ not cover  
 any later amendments and editions of the adopted matter, but if the  
 agency wishes to incorporate them in its rule, it shall ~~amend-DO SO~~  
**BY AMENDING** the rule or ~~promulgate-PROMULGATING~~ a new rule.  
~~therefor.~~ The agency shall have available copies of the adopted  
 matter for inspection and distribution to the public at cost and  
 the rules ~~shall-MUST~~ state where copies of the adopted matter are  
 available from the agency and the agency of the United States or  
 the national organization or association and the cost of a copy as  
 of the time the rule is adopted.

(5) A guideline, operational memorandum, bulletin,  
 interpretive statement, or form with instructions is not  
 enforceable by an agency, is considered merely advisory, and ~~shall~~  
**MUST** not be given the force and effect of law. An agency shall not  
 rely upon a guideline, operational memorandum, bulletin,  
 interpretive statement, or form with instructions to support the  
 agency's decision to act or refuse to act if that decision is  
 subject to judicial review. A court shall not rely upon a  
 guideline, operational memorandum, bulletin, interpretive

1 statement, or form with instructions to uphold an agency decision  
2 to act or refuse to act.

3 (6) ~~Where~~**IF** a statute provides that an agency may proceed by  
4 rule-making or by order and an agency proceeds by order in lieu of  
5 rule-making, the **AGENCY SHALL NOT GIVE THE** order ~~shall not be given~~  
6 general applicability to persons who were not parties to the  
7 proceeding or contested case before the issuance of the order,  
8 unless the order was issued after public notice and a public  
9 hearing.

10 (7) A rule ~~shall~~**MUST** not exceed the rule-making delegation  
11 contained in the statute authorizing the rule-making.

12 **(8) EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**  
13 **IF THE FEDERAL GOVERNMENT HAS MANDATED THAT THIS STATE PROMULGATE**  
14 **RULES, AN AGENCY SHALL NOT ADOPT OR PROMULGATE A RULE MORE**  
15 **STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD UNLESS**  
16 **THE DIRECTOR OF THE AGENCY DETERMINES THAT A PREPONDERANCE OF THE**  
17 **EVIDENCE ESTABLISHES A NEED TO EXCEED THE APPLICABLE FEDERAL**  
18 **STANDARD.**

19 **(9) EXCEPT FOR AN EMERGENCY RULE PROMULGATED UNDER SECTION 48,**  
20 **IF THE FEDERAL GOVERNMENT HAS NOT MANDATED THAT THIS STATE**  
21 **PROMULGATE RULES, AN AGENCY SHALL NOT ADOPT OR PROMULGATE A RULE**  
22 **MORE STRINGENT THAN AN APPLICABLE FEDERAL STANDARD UNLESS**  
23 **SPECIFICALLY AUTHORIZED BY A STATUTE OF THIS STATE OR UNLESS THE**  
24 **DIRECTOR OF THE AGENCY DETERMINES THAT A PREPONDERANCE OF THE**  
25 **EVIDENCE ESTABLISHES A NEED TO EXCEED THE APPLICABLE FEDERAL**  
26 **STANDARD.**

27 Sec. 45. (1) Except as otherwise provided in this subsection,

1 an agency shall electronically submit a proposed rule to the  
2 legislative service bureau for its formal certification. If  
3 requested by the legislative service bureau, the office shall also  
4 transmit up to 4 paper copies of the proposed rule. The legislative  
5 service bureau shall promptly issue a certificate of approval  
6 indicating whether the proposed rule is proper as to all matters of  
7 form, classification, and arrangement. If the legislative service  
8 bureau fails to issue a certificate of approval within 21 calendar  
9 days after receipt of the submission for formal certification, the  
10 office may issue a certificate of approval. If the legislative  
11 service bureau returns the submission to the agency before the  
12 expiration of the 21-calendar-day time period, the 21-calendar-day  
13 time period is tolled until the rule is resubmitted by the agency.  
14 After resubmission, the legislative service bureau has the  
15 remainder of the 21-calendar-day time period or 6 calendar days,  
16 whichever is longer, to consider the formal certification of the  
17 rule. The office may approve a proposed rule if it considers the  
18 proposed rule to be legal and appropriate.

19 (2) Except as provided in subsection (6), after notice is  
20 given as provided in this act and before the agency proposing the  
21 rule has formally adopted the rule, the agency shall prepare an  
22 agency report containing a synopsis of the comments contained in  
23 the public hearing record, a copy of the request for rule-making,  
24 and the regulatory impact statement required under subsection (3).  
25 In the report, the agency shall describe any changes in the  
26 proposed rules that were made by the agency after the public  
27 hearing. The office shall transmit by notice of transmittal to the

1 committee copies of the rule, the agency reports containing the  
2 request for rule-making, a copy of the regulatory impact statement,  
3 and certificates of approval from the legislative service bureau  
4 and the office. The office shall also electronically submit to the  
5 committee a copy of the rule, any agency reports required under  
6 this subsection, any regulatory impact statements required under  
7 subsection (3), and any certificates of approval required under  
8 subsection (1). The agency shall electronically transmit to the  
9 committee the records described in this subsection within 1 year  
10 after the date of the last public hearing on the proposed rule.

11 (3) Except as provided in subsection (6), an agency shall  
12 prepare and include with a notice of transmittal under subsection  
13 (2) the request for rule-making and the response from the office, a  
14 small business impact statement prepared under section 40, and a  
15 regulatory impact statement. The regulatory impact statement must  
16 contain all of the following information:

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

20 **(B) IF SECTION 32(8) APPLIES AND THE PROPOSED RULE IS MORE**  
21 **STRINGENT THAN THE APPLICABLE FEDERALLY MANDATED STANDARD, A**  
22 **STATEMENT OF THE SPECIFIC FACTS THAT SUPPORT THE DIRECTOR'S**  
23 **DETERMINATION THAT A PREPONDERANCE OF THE EVIDENCE ESTABLISHES A**  
24 **NEED TO EXCEED THE APPLICABLE FEDERAL STANDARD AND AN EXPLANATION**  
25 **OF THE EXCEPTIONAL CIRCUMSTANCES THAT NECESSITATE THE MORE**  
26 **STRINGENT STANDARD.**

27 **(C) IF SECTION 32(9) APPLIES AND THE PROPOSED RULE IS MORE**

1 STRINGENT THAN THE APPLICABLE FEDERAL STANDARD, EITHER THE STATUTE  
 2 THAT SPECIFICALLY AUTHORIZES THE MORE STRINGENT RULE OR A STATEMENT  
 3 OF THE SPECIFIC FACTS THAT SUPPORT THE DIRECTOR'S DETERMINATION  
 4 THAT A PREPONDERANCE OF THE EVIDENCE ESTABLISHES A NEED TO EXCEED  
 5 THE APPLICABLE FEDERAL STANDARD AND AN EXPLANATION OF THE  
 6 EXCEPTIONAL CIRCUMSTANCES THAT NECESSITATE THE MORE STRINGENT  
 7 STANDARD.

8 (D) ~~(b)~~—If requested by the office or the committee, a  
 9 comparison of the proposed rule to standards in similarly situated  
 10 states, based on geographic location, topography, natural  
 11 resources, commonalities, or economic similarities.

12 (E) ~~(c)~~—An identification of the behavior and frequency of  
 13 behavior that the rule is designed to alter.

14 (F) ~~(d)~~—An identification of the harm resulting from the  
 15 behavior that the rule is designed to alter and the likelihood that  
 16 the harm will occur in the absence of the rule.

17 (G) ~~(e)~~—An estimate of the change in the frequency of the  
 18 targeted behavior expected from the rule.

19 (H) ~~(f)~~—An identification of the businesses, groups, or  
 20 individuals who will be directly affected by, bear the cost of, or  
 21 directly benefit from the rule.

22 (I) ~~(g)~~—An identification of any reasonable alternatives to  
 23 regulation ~~pursuant to~~ **UNDER** the proposed rule that would achieve  
 24 the same or similar goals.

25 (J) ~~(h)~~—A discussion of the feasibility of establishing a  
 26 regulatory program similar to that proposed in the rule that would  
 27 operate through market-based mechanisms.

1           **(K)** ~~(i)~~—An estimate of the cost of rule imposition on the  
2 agency promulgating the rule.

3           **(L)** ~~(j)~~—An estimate of the actual statewide compliance costs  
4 of the proposed rule on individuals.

5           **(M)** ~~(k)~~—A demonstration that the proposed rule is necessary  
6 and suitable to achieve its purpose in proportion to the burdens it  
7 places on individuals.

8           **(N)** ~~(l)~~—An estimate of the actual statewide compliance costs  
9 of the proposed rule on businesses and other groups.

10          **(O)** ~~(m)~~—An identification of any disproportionate impact the  
11 proposed rule may have on small businesses because of their size.

12          **(P)** ~~(n)~~—An identification of the nature of any report required  
13 and the estimated cost of its preparation by small businesses  
14 required to comply with the proposed rule.

15          **(Q)** ~~(o)~~—An analysis of the costs of compliance for all small  
16 businesses affected by the proposed rule, including costs of  
17 equipment, supplies, labor, and increased administrative costs.

18          **(R)** ~~(p)~~—An identification of the nature and estimated cost of  
19 any legal consulting and accounting services that small businesses  
20 would incur in complying with the proposed rule.

21          **(S)** ~~(q)~~—An estimate of the ability of small businesses to  
22 absorb the costs estimated under subdivisions ~~(n) to (p)~~ **TO (R)**  
23 without suffering economic harm and without adversely affecting  
24 competition in the marketplace.

25          **(T)** ~~(r)~~—An estimate of the cost, if any, to the agency of  
26 administering or enforcing a rule that exempts or sets lesser  
27 standards for compliance by small businesses.

1        **(U)** ~~(s)~~—An identification of the impact on the public interest  
 2 of exempting or setting lesser standards of compliance for small  
 3 businesses.

4        **(V)** ~~(t)~~—A statement describing the manner in which the agency  
 5 reduced the economic impact of the rule on small businesses or a  
 6 statement describing the reasons such a reduction was not feasible.

7        **(W)** ~~(u)~~—A statement describing how the agency has involved  
 8 small businesses in the development of the rule.

9        **(X)** ~~(v)~~—An estimate of the primary and direct benefits of the  
 10 rule.

11       **(Y)** ~~(w)~~—An estimate of any cost reductions to businesses,  
 12 individuals, groups of individuals, or governmental units as a  
 13 result of the rule.

14       **(Z)** ~~(x)~~—An estimate of any increase in revenues to state or  
 15 local governmental units as a result of the rule.

16       **(AA)** ~~(y)~~—An estimate of any secondary or indirect benefits of  
 17 the rule.

18       **(BB)** ~~(z)~~—An identification of the sources the agency relied on  
 19 in compiling the regulatory impact statement, including the  
 20 methodology ~~utilized~~ **USED** in determining the existence and extent  
 21 of the impact of a proposed rule and a cost-benefit analysis of the  
 22 proposed rule.

23       **(CC)** ~~(aa)~~—A detailed recitation of the efforts of the agency  
 24 to comply with the mandate to reduce the disproportionate impact of  
 25 the rule ~~upon~~ **ON** small businesses as described in section 40(1)(a)  
 26 to (d).

27       **(DD)** ~~(bb)~~—Any other information required by the office.



1           (4) ~~The~~**AN** agency shall electronically transmit the regulatory  
2 impact statement required under subsection (3) to the office at  
3 least 28 days before the public hearing required under section 41.  
4 The agency shall not hold the public hearing until the regulatory  
5 impact statement has been reviewed and approved by the office. The  
6 agency shall also electronically transmit a copy of the regulatory  
7 impact statement to the committee before the public hearing and the  
8 agency shall make copies available to the public at the public  
9 hearing. The agency shall publish the regulatory impact statement  
10 on its website at least 10 days before the date of the public  
11 hearing.

12           (5) The committee shall electronically transmit to the senate  
13 fiscal agency and the house fiscal agency a copy of each rule and  
14 regulatory impact statement filed with the committee and a copy of  
15 the agenda identifying the proposed rules to be considered by the  
16 committee. The senate fiscal agency and the house fiscal agency  
17 shall analyze each proposed rule for possible fiscal implications  
18 that, if the rule were adopted, would result in additional  
19 appropriations in the current fiscal year or commit the legislature  
20 to an appropriation in a future fiscal year. The senate fiscal  
21 agency and the house fiscal agency shall electronically report  
22 their findings to the senate and house appropriations committees  
23 and to the committee before the date of consideration of the  
24 proposed rule by the committee.

25           (6) Subsections (2), (3), and (4) do not apply to a rule that  
26 is promulgated under section 33 or 48 or a rule to which sections  
27 41 and 42 do not apply as provided in section 44.

**1** Enacting section 1. This amendatory act takes effect January  
**2** 1, 2018.