

# HOUSE BILL No. 5136

September 17, 1991, Introduced by Rep. Griffin and referred to the Committee on Judiciary.

A bill to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of the Michigan register; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to provide for declaratory judgments as to rules; and to repeal certain acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### ARTICLE 1

#### GENERAL PROVISIONS

Sec. 1. This act shall be known and may be cited as the "administrative procedures act of 1992".

Sec. 2. As used in this act:

1 (a) "Adjudication" means the agency process for the  
2 formulation of an order.

3 (b) "Adoption of a rule" means that step in the processing  
4 of a rule consisting of the formal action of an agency establish-  
5 ing a rule before its promulgation.

6 (c) "Agency" means a state department, bureau, division,  
7 section, board, commission, trustee, authority, or officer, cre-  
8 ated by the constitution, statute, or agency action. Agency does  
9 not include an agency in the legislative or judicial branches of  
10 state government, the governor, an agency having direct governing  
11 control over an institution of higher education, the state civil  
12 service commission, or an association of insurers created under  
13 the insurance code of 1956, Act No. 218 of the Public Acts of  
14 1956, being sections 500.100 to 500.8302 of the Michigan Compiled  
15 Laws, or other association or facility formed under Act No. 218  
16 of the Public Acts of 1956 as a nonprofit organization of insurer  
17 members.

18 (d) "Agency action" means the whole or part of an agency  
19 rule, order, license, sanction, relief, or the equivalent or  
20 denial thereof, or the failure to act.

21 (e) "Agency proceeding" means rulemaking, adjudication, or  
22 licensing, including rate-making and contested cases.

23 (f) "Approval of a rule" means the actions described in  
24 article 3 regarding the action of the legislature required to  
25 approve substantive rules through the committee or through con-  
26 current resolution.

1 (g) "Committee" means the joint committee on administrative  
2 rules.

3 (h) "Contested case" means an adjudication, including  
4 rate-making, price fixing, and licensing, in which a determina-  
5 tion of the legal rights, duties, or privileges of a named party  
6 is required by statute to be made by an agency after an opportu-  
7 nity for an evidentiary hearing. If a hearing is held before an  
8 agency and an appeal is taken to another agency, the hearing and  
9 the appeal are considered to be a continuous adjudication as  
10 though before a single agency.

11 (i) "Court" means the circuit court unless otherwise  
12 indicated.

13 (j) "Housekeeping rule" means a rule that describes the  
14 internal organization, operation, management, and practices of an  
15 agency. Housekeeping rule includes, but is not limited to,  
16 instructions or guidelines to employees regarding the scope and  
17 exercise of their functions.

18 (k) "Interpretive rule" means a rule that expresses the  
19 formal opinion of an agency of the meaning of a statute or of  
20 another rule, which meaning the agency intends to follow in the  
21 execution or administration of its designated functions.

22 (l) "License" means the whole or part of an agency permit,  
23 certificate, approval, registration, charter, franchise, or simi-  
24 lar form of permission required by law. License does not include  
25 a license solely for revenue purposes or a license or registra-  
26 tion issued under the Michigan vehicle code, Act No. 300 of the

1 Public Acts of 1949, being sections 257.1 to 257.923 of the  
2 Michigan Compiled Laws.

3 (m) "Licensing" means agency process involving the grant,  
4 denial, renewal, suspension, revocation, annulment, withdrawal,  
5 recall, cancellation, or amendment of a license.

6 (n) "Michigan administrative code" or "code" means the com-  
7 pilation of rules required to be kept pursuant to Act No. 193 of  
8 the Public Acts of 1970, being sections 8.41 to 8.48 of the  
9 Michigan Compiled Laws.

10 (o) "Michigan register" means the publication described in  
11 section 21.

12 (p) "Order" means the whole or part of a final disposition,  
13 whether affirmative, negative, injunctive, or declaratory in  
14 form, of an agency in a matter other than rulemaking, including,  
15 but not limited to, licensing and rate-making. This definition  
16 applies regardless of the denomination or characterization of the  
17 action by the agency.

18 (q) "Party" means a person or agency named, admitted, or  
19 properly seeking and entitled of right to be admitted as a party  
20 in a contested case. Party includes a person or agency admitted  
21 for a limited purpose or under limited conditions.

22 (r) "Person" means an individual, partnership, association,  
23 corporation, governmental subdivision, or public or private orga-  
24 nization or authority of any kind other than the agency engaged  
25 in the particular proceeding.

26 (s) "Procedural rule" means a rule that establishes the  
27 methods by which the agency will execute its designated functions

1 in regard to the contact it has with persons and describes the  
2 procedures, practices, forms, applications, guidelines, instruc-  
3 tions, and other requirements that persons must follow in the  
4 execution or administration of its designated functions.

5 (t) "Processing of a rule" means the action required or  
6 authorized by this act regarding a rule that is to be promul-  
7 gated, including the rule's adoption and the final step of the  
8 rule's promulgation.

9 (u) "Promulgation of a rule" means that step in the process-  
10 ing of a rule consisting of the filing of a rule with the secre-  
11 tary of state.

12 (v) "Relief" means any of the following:

13 (i) A grant of money, assistance, license, authority, exemp-  
14 tion, exception, privilege, or remedy.

15 (ii) The recognition of a claim, right, immunity, privilege,  
16 exemption, or exception.

17 (iii) The taking of other action on the application or peti-  
18 tion of, and beneficial to, a person.

19 (w) "Rule" means an agency regulation, statement, standard,  
20 policy, guideline, ruling, or instruction of general applicabi-  
21 lity that implements or applies law enforced or administered by  
22 the agency; interprets a statute or rule of the agency; pre-  
23 scribes the procedure, practice, or external requirements of the  
24 agency; or describes the internal organization, operation, man-  
25 agement, or practices of the agency. A rule includes the amend-  
26 ment, suspension, or rescission of a rule, but does not include  
27 any of the following:

1       (i) A resolution or order of the state administrative  
2 board.

3       (ii) A formal opinion of the attorney general or any embodi-  
4 ment of legal advice provided by the attorney general to an  
5 agency or its employees.

6       (iii) A rule or order establishing or fixing rates or  
7 tariffs.

8       (iv) A rule or order pertaining to game and fish and promul-  
9 gated under Act No. 230 of the Public Acts of 1925, being sec-  
10 tions 300.1 to 300.5 of the Michigan Compiled Laws; the Michigan  
11 sports fishing law, Act No. 165 of the Public Acts of 1929, being  
12 sections 301.1 to 306.3 of the Michigan Compiled Laws; and the  
13 wildlife conservation act, Act No. 256 of the Public Acts of  
14 1988, being sections 300.251 to 300.270 of the Michigan Compiled  
15 Laws.

16       (v) A rule relating to the use of streets or highways the  
17 substance of which is indicated to the public by means of signs  
18 or signals.

19       (vi) A determination, decision, or order in a contested  
20 case.

21       (vii) An intergovernmental, interagency, or intraagency mem-  
22 orandum, directive, or communication that does not affect the  
23 rights of, or procedures and practices available to, the public.

24       (viii) Any informal material not included within the defini-  
25 tions of substantive, interpretive, procedural, or housekeeping  
26 rules.

1        (ix) A declaratory order or other disposition of a  
2 particular matter as applied to a specific set of facts  
3 involved.

4        (x) A decision by an agency to exercise or not to exercise a  
5 permissive statutory power although private rights or interests  
6 are affected.

7        (xi) Unless another statute requires a rule to be promul-  
8 gated under this act, a rule or policy that only concerns the  
9 inmates of a state correctional facility or those committed to  
10 the custody of the state corrections commission and does not  
11 directly affect the public.

12        (xii) After final approval by the certificate of need com-  
13 mission or the statewide health coordinating council under sec-  
14 tion 22215 or 22217 of the public health code, Act No. 368 of the  
15 Public Acts of 1978, being sections 333.22215 and 333.22217 of  
16 the Michigan Compiled Laws, any of the following:

17        (A) The designation, deletion, or revision of covered medi-  
18 cal equipment and covered clinical services.

19        (B) Certificate of need review standards.

20        (C) Data reporting requirements and criteria for determining  
21 health facility viability.

22        (D) Standards used by the department of public health in  
23 designating a regional certificate of need review agency.

24        (E) The modification of the 100 licensed bed limitation for  
25 short-term nursing care programs set forth in section 22210 of  
26 Act No. 368 of the Public Acts of 1978, being section 333.22210  
27 of the Michigan Compiled Laws.

1 (x) "Rulemaking" means the agency process for formulating,  
2 amending, or rescinding a rule.

3 (y) "Sanction" means any of the following:

4 (i) The prohibition, requirement, limitation, or other con-  
5 dition affecting the freedom of a person.

6 (ii) The withholding of relief.

7 (iii) The imposition of a penalty or fine.

8 (iv) The destruction, taking, seizure, or withholding of  
9 property.

10 (v) The assessment of damages, reimbursement, restitution,  
11 compensation, costs, charges, or fees.

12 (vi) The requirement, revocation, or suspension of a  
13 license.

14 (vii) The taking of other compulsive or restrictive action.

15 (z) "Substantive rule" means a rule that establishes a stan-  
16 dard of conduct that implements law enforced by or administered  
17 by the agency and that affects private rights and obligations.

18 Sec. 3. This act shall not be construed to repeal or pro-  
19 hibit additional requirements imposed by statute.

20 Sec. 4. (1) Rules that became effective before the effec-  
21 tive date of this act continue in effect until amended or  
22 rescinded.

23 (2) If a law authorizing or directing an agency to promul-  
24 gate rules is repealed and substantially the same rulemaking  
25 power or duty is vested in the same or a successor agency by a  
26 new provision of law or the function of the agency to which the  
27 rules are related is transferred to another agency, by law or



1 executive order, the existing rules of the original agency  
2 relating to the function of the agency continue in effect until  
3 amended or rescinded, and the agency or successor agency may  
4 rescind any rule relating to the function. If a law creating an  
5 agency or authorizing or directing it to promulgate rules is  
6 repealed or the agency is abolished and substantially the same  
7 rulemaking power or duty is not vested in the same or a successor  
8 agency by a new law and the function of the agency to which the  
9 rules are related is not transferred to another agency, the  
10 existing applicable rules of the original agency are automati-  
11 cally rescinded as of the effective date of the repeal of the law  
12 or the abolition of the agency.

13 (3) The rescission of a rule does not revive a rule that was  
14 previously rescinded.

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

18 (5) A rule may be amended or rescinded by another rule that  
19 constitutes the whole or a part of a filing of rules or as a  
20 result of an act of the legislature.

21 Sec. 5. (1) Definitions of words and phrases and rules of  
22 construction prescribed in any statute and that apply to all  
23 statutes of this state also apply to rules unless clearly indi-  
24 cated to the contrary.

25 (2) A rule or exception to a rule shall not unlawfully dis-  
26 criminate in favor of or against any person, and a person

1 affected by a rule is entitled to the same benefits as any other  
2 person under the same or similar circumstances.

3 (3) The violation of a rule is a crime when so provided by  
4 statute. A rule shall not make an act or omission to act a crime  
5 or prescribe a criminal penalty for violation of a rule.

6 (4) An agency may adopt, by reference in its rules and with-  
7 out publishing the adopted matter in full, all or any part of a  
8 code, standard, or regulation that has been adopted by an agency  
9 of the state or of the United States or by a nationally recog-  
10 nized organization or association. The reference shall fully  
11 identify the adopted matter by date and otherwise. The reference  
12 shall not cover any later amendments or editions of the adopted  
13 matter, but if the agency wishes to incorporate them in its rule,  
14 it shall amend the rule or promulgate a new rule for the later  
15 amendments or editions. The agency shall have available copies  
16 of the adopted matter for inspection and distribution to the  
17 public at cost. The rules shall state where copies of the  
18 adopted matter are available from the agency and from the agency  
19 of the United States or the national organization or association  
20 and the cost of the adopted matter as of the time the rule is  
21 adopted.

22 (5) The filing of a rule under this act raises a rebuttable  
23 presumption that the rule was adopted, filed with the secretary  
24 of state, and made available for public inspection as required by  
25 this act.

1 (6) The publication of a rule in the Michigan register, the  
2 Michigan administrative code, or an annual supplement to the code  
3 raises a rebuttable presumption of all of the following:

4 (a) The rule was adopted, filed with the secretary of state,  
5 and made available for public inspection as required by this  
6 act.

7 (b) The rule printed in the publication is a true and cor-  
8 rect copy of the promulgated rule.

9 (c) The rule has complied with all applicable requirements  
10 of this act.

11 (7) The courts shall take judicial notice of a rule that  
12 becomes effective under this act.

## 13 ARTICLE 2

### 14 REGISTER AND ADMINISTRATIVE CODE

15 Sec. 21. (1) The legislative service bureau shall publish  
16 the Michigan register each month. The Michigan register shall  
17 contain all of the following:

18 (a) Executive orders and executive reorganization orders.

19 (b) On a cumulative basis, the numbers and subject matter of  
20 the enrolled senate and house bills signed into law by the gover-  
21 nor during the calendar year and the corresponding public act  
22 numbers.

23 (c) On a cumulative basis, the numbers and subject matter of  
24 the enrolled senate and house bills vetoed by the governor during  
25 the calendar year.

26 (d) Proposed rules.

- 1 (e) Notices of public hearings on proposed rules.
- 2 (f) Substantive rules filed with the secretary of state.
- 3 (g) Emergency rules filed with the secretary of state.
- 4 (h) Interpretive, procedural, and housekeeping rules adopted  
5 by an agency.
- 6 (i) Other official information considered necessary or  
7 appropriate by the legislative service bureau.
- 8 (j) Formal attorney general opinions.
- 9 (k) All of the items listed in section 2(w)(xi) after final  
10 approval of the certificate of need commission or the statewide  
11 health coordinating council.
- 12 (2) The legislative service bureau shall publish a cumula-  
13 tive index for the Michigan register.
- 14 (3) The Michigan register shall be available for public sub-  
15 scription at a fee reasonably calculated to cover publication and  
16 distribution costs.
- 17 (4) An agency shall transmit a copy of a proposed rule and  
18 notice of the public hearing to the legislative service bureau  
19 for publication in the Michigan register.
- 20 (5) If publication of an agency's proposed rule would be  
21 unreasonably expensive or lengthy, the legislative service bureau  
22 may publish a brief synopsis of the proposed rule and include  
23 information on how to obtain a complete copy of the proposed rule  
24 from the agency at no cost.
- 25 Sec. 22. (1) The legislative service bureau shall annually  
26 publish a supplement to the Michigan administrative code. The  
27 annual supplement shall contain all promulgated substantive rules

1 and adopted procedural and interpretive rules published in the  
2 Michigan register during the current year, except emergency  
3 rules; a cumulative numerical listing of amendments; additions  
4 to, and rescissions of, rules since the last compilation of the  
5 code; and a cumulative alphabetical index.

6 (2) The Michigan administrative code and the annual supple-  
7 ments shall be made available for public subscription at a fee  
8 reasonably calculated to cover publication and distribution  
9 costs.

10 Sec. 23. (1) The legislative service bureau shall perform  
11 the editorial work for the Michigan register and the Michigan  
12 administrative code and its annual supplement. The classifica-  
13 tion, arrangement, numbering, and indexing of rules shall be uni-  
14 form and shall conform as nearly as practicable to the classifi-  
15 cation, arrangement, numbering, and indexing of the compiled  
16 laws. The bureau may correct in the publications obvious errors  
17 in rules when requested by the promulgating agency to do so. The  
18 bureau may provide for publishing all or any part of the Michigan  
19 administrative code in bound volume, pamphlet, or loose-leaf  
20 form.

21 (2) An annual supplement to the Michigan administrative code  
22 shall be published at the earliest practicable date.

23 Sec. 24. (1) The legislative service bureau may omit from  
24 the Michigan register, the Michigan administrative code, and the  
25 code's annual supplement any rule the publication of which would  
26 be unreasonably expensive or lengthy if the rule, in printed or  
27 reproduced form, is made available on application to the

1 promulgating agency and if the code publication and the Michigan  
2 register contain a notice stating the general subject of the  
3 omitted rule and how a copy of the rule may be obtained.

4       (2) The cost of publishing and distributing annual supple-  
5 ments to the Michigan administrative code, proposed rules,  
6 notices of public hearings on proposed rules, rules, and emer-  
7 gency rules filed with the secretary of state in the Michigan  
8 register shall be prorated by the legislative service bureau on  
9 the basis of the volume of these materials published for each  
10 agency in the Michigan register and annual supplement to the  
11 Michigan administrative code, and the cost of publishing and dis-  
12 tribution shall be paid out of appropriations to the agencies.  
13 The legislative service bureau may arrange to provide to agencies  
14 copies or plates of the rules and special compilations of rules,  
15 for which it shall be reimbursed for its costs by the agencies.

16       Sec. 25. (1) The legislative service bureau shall print or  
17 order printed a sufficient number of copies of the Michigan reg-  
18 ister, the Michigan administrative code, and the annual supple-  
19 ment to the code to meet the requirements of this section. The  
20 department of management and budget shall deliver or mail copies  
21 as follows:

22       (a) To the secretary of the senate, a sufficient number to  
23 supply each senator, standing committee, and the secretary.

24       (b) To the clerk of the house of representatives, a suffi-  
25 cient number to supply each representative, standing committee,  
26 and the clerk.

1 (c) To each member of the legislature, 1 copy at the  
2 member's home address.

3 (d) To the legislative service bureau, 1 copy for each  
4 attorney on the bureau's staff.

5 (e) To the department of the attorney general, 1 copy for  
6 each division.

7 (f) To each other state department, 3 copies.

8 (g) To each county law library, bar association library, and  
9 law school library in this state, 1 copy.

10 (h) To other libraries throughout this state, 1 copy, upon  
11 request.

12 (i) Additional copies to an officer or agency of this state  
13 and other governmental officers, agencies, and libraries approved  
14 by the legislative service bureau; and additional copies of the  
15 Michigan register for persons who subscribe to the publication as  
16 provided in subsection (3).

17 (2) The copies of the Michigan register, the Michigan admin-  
18 istrative code, and the annual code supplement are for official  
19 use only by the agencies and persons prescribed in subsection  
20 (1), and they shall deliver them to their successors, except that  
21 members of the legislature may retain copies of the Michigan reg-  
22 ister and the Michigan administrative code sent to their home  
23 address. The department of management and budget shall send to  
24 the home address of a new member of the legislature the current  
25 volume of the Michigan register and a complete copy of the  
26 Michigan administrative code. The department of management and  
27 budget shall deliver to the state library the Michigan register,

1 the Michigan administrative code, and the annual supplement, when  
2 requested by the state library, sufficient for the library's use  
3 and for exchanges. The department of management and budget shall  
4 hold additional copies for sale at a price not less than the pub-  
5 lication and distribution costs which shall be determined by the  
6 legislative service bureau. Copies shall be made available in  
7 both printed and electronic form.

8       (3) A person may subscribe to the Michigan register. The  
9 legislative service bureau shall determine a subscription price  
10 which shall not be more than the publication and distribution  
11 costs.

### 12                                   ARTICLE 3

#### 13                                   PROCEDURES IN RULEMAKING

14       Sec. 31. An agency shall adopt housekeeping rules insofar  
15 as practicable. In adopting housekeeping rules, an agency is  
16 governed by the terms of this section, but the other procedures  
17 contained in this article do not apply. When adopted, a house-  
18 keeping rule is a public record and shall be made available by  
19 the agency for public inspection. Copies of housekeeping rules  
20 shall be sent to the joint committee on administrative rules, the  
21 legislative service bureau, the office of the governor, and all  
22 persons who have requested in writing the agency for advance  
23 notice of proposed action that may affect them. Housekeeping  
24 rules shall not be included in the Michigan administrative code.

25       Sec. 32. (1) An agency shall adopt procedural rules,  
26 including, but not limited to, procedural rules prescribing the  
27 methods by which the public may obtain information and submit



1 requests. In adopting procedural rules, an agency is governed by  
2 the terms of this section and sections 41 and 42, but the other  
3 procedures contained in this article do not apply. When adopted,  
4 a procedural rule is a public record and shall be made available  
5 by the agency for public inspection. Copies of procedural rules  
6 shall be sent to the joint committee on administrative rules, the  
7 legislative service bureau, the office of the governor, and all  
8 persons who have requested in writing the agency for advance  
9 notice of proposed action that may affect them. Procedural rules  
10 adopted by an agency shall be published in the Michigan register  
11 and shall take effect on the date of publication in the register  
12 unless a later time is stated in the rules. Procedural rules  
13 shall be included in the Michigan administrative code.

14       (2) A procedural rule adopted after the effective date of  
15 this section is not valid unless processed in substantial compli-  
16 ance with this section. However, inadvertent failure to give  
17 notice to any person as required does not invalidate a procedural  
18 rule that was otherwise processed in substantial compliance with  
19 this section.

20       (3) A proceeding to contest a procedural rule on the grounds  
21 of noncompliance with this section shall be commenced within 2  
22 years after the effective date of the procedural rule.

23       (4) An agency may adopt procedural rules, not inconsistent  
24 with this act or other applicable statutes, prescribing proce-  
25 dures for contested cases.

1       (5) A procedural rule shall be clearly labeled as a  
2 procedural rule and shall include a statement that it is not  
3 intended to have substantive effect.

4       Sec. 33. (1) An agency may adopt interpretive rules. In  
5 adopting interpretive rules, an agency is governed by the terms  
6 of this section and sections 41 and 42, but the other provisions  
7 contained in this article do not apply. When adopted, an inter-  
8 pretive rule is a public record and shall be made available by  
9 the agency for public inspection. Copies of interpretive rules  
10 shall be sent to the joint committee on administrative rules, the  
11 legislative service bureau, the office of the governor, and all  
12 persons who have requested in writing the agency for advance  
13 notice of proposed action that may affect them. Interpretive  
14 rules adopted by an agency shall be published in the Michigan  
15 register and shall take effect on the date of publication in the  
16 register unless a later time is stated in the rules.  
17 Interpretive rules shall be included in the Michigan administra-  
18 tive code.

19       (2) An interpretive rule adopted after the effective date of  
20 this section is not valid unless processed in substantial compli-  
21 ance with this section. However, inadvertent failure to give  
22 notice to any person as required does not invalidate an interpre-  
23 tive rule that was otherwise processed in substantial compliance  
24 with this section.

25       (3) A proceeding to contest an interpretive rule on the  
26 grounds of noncompliance with this section shall be commenced

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

3 (4) An interpretive rule shall be clearly labeled as an  
4 interpretive rule and shall include a statement that it is not  
5 intended to have substantive effect and that it does not have the  
6 force and effect of law.

7 Sec. 34. The joint committee on administrative rules is  
8 created and consists of 7 members of the senate and 7 members of  
9 the house of representatives appointed in the same manner as  
10 standing committees are appointed for terms of 2 years. Members  
11 of the committee shall serve without compensation, but shall be  
12 reimbursed for expenses incurred in the business of the  
13 committee. The expenses of the members of the senate shall be  
14 paid from appropriations to the senate, and the expenses of the  
15 members of the house of representatives shall be paid from appro-  
16 priations to the house of representatives. The committee may  
17 meet during a session of the legislature and during an interim  
18 between sessions. The committee may hold a hearing on a substan-  
19 tive rule transmitted to the committee. Action by the committee,  
20 including, but not limited to, action taken under section 52,  
21 shall be by concurring majorities of the members from each  
22 house. The committee shall report its activities and recommenda-  
23 tions to the legislature at each regular session.

24 Sec. 35. The joint committee on administrative rules may  
25 prescribe procedures and standards not inconsistent with this act  
26 or other applicable statutes, for the drafting, processing,  
27 publication, and distribution of interpretive, procedural, and

1 substantive rules. The procedures and standards shall be  
2 included in a manual that the legislative service bureau shall  
3 publish and distribute in reasonable quantities to the state  
4 departments.

5       Sec. 36. A person may request an agency to adopt an inter-  
6 pretive, procedural, or substantive rule. Within 90 days after  
7 the filing of a request, the agency shall initiate the processing  
8 of a rule or issue a concise written statement of its principal  
9 reasons for denial of the request. The denial of a request is  
10 not subject to judicial review.

11       Sec. 41. (1) Before the adoption of an interpretive, proce-  
12 dural, or substantive rule, an agency shall give notice of a  
13 public hearing. The notice shall be given within the time pre-  
14 scribed by any applicable statute, or if none, not less than 30  
15 days or more than 90 days before the public hearing. The notice  
16 shall include all of the following:

17       (a) A reference to the statutory authority under which the  
18 action is proposed.

19       (b) The time and place of the public hearing and a statement  
20 of the manner in which data, views, and arguments may be submit-  
21 ted to the agency at other times by a person.

22       (c) A statement of the terms or substance of the proposed  
23 rule, a description of the subjects and issues involved, and the  
24 proposed effective date of the rule.

25       (2) The agency shall publish the notice of public hearing as  
26 prescribed in any applicable statute, or if none, in a manner  
27 selected by the agency as best calculated to give notice to

1 persons likely to be affected by the proposed rule. Methods that  
2 may be employed by the agency, depending upon the circumstances,  
3 include publication of the notice in 1 or more newspapers of gen-  
4 eral circulation or, if appropriate, in trade, industry, govern-  
5 mental, or professional publications. If the persons likely to  
6 be affected by the proposed rule are unorganized or diffuse in  
7 character and location, the agency shall publish the notice as a  
8 display advertisement in at least 3 newspapers of general circu-  
9 lation in different parts of the state, 1 of which shall be pub-  
10 lished in the Upper Peninsula.

11 (3) In addition to the requirements of subsection (1), the  
12 agency shall submit a copy of the notice to the legislative serv-  
13 ice bureau for publication in the Michigan register. An agency's  
14 notice shall be published in the Michigan register not less than  
15 30 days or more than 90 days before the public hearing.

16 (4) The agency shall transmit copies of the notice to the  
17 joint committee on administrative rules, the legislative service  
18 bureau, the office of the governor, the department of attorney  
19 general, and each person who requested in writing the agency for  
20 advance notice of proposed action that may affect the person.  
21 The notice shall be by mail, in writing, to the last address  
22 specified by the person. A request for notice shall be renewed  
23 each December.

24 (5) Before the scheduled date of hearing, the committee may  
25 determine by concurring majorities of the members from each house  
26 that a proposed procedural or interpretive rule is substantive as  
27 defined in section 2(z). The committee shall provide to the

1 agency a detailed explanation of its conclusion, and the agency  
2 shall not adopt the rule without complying with sections 45 and  
3 46. The agency may proceed to adopt the rule, if the committee  
4 takes no action or states its agreement with the agency's charac-  
5 terization of the rule.

6       Sec. 42. (1) The public hearing required in section 41  
7 shall comply with any applicable statute, but is not subject to  
8 the provisions of this act governing contested cases. An agency  
9 that is subject to section 41 shall adopt procedural rules for  
10 the conduct of public hearings called for in section 41 within 2  
11 years after the effective date of this act.

12       (2) The public hearing shall be open to the public. A  
13 person shall have the opportunity to present data, views, and  
14 argument, both in writing and orally, but the agency may limit  
15 the time available to each person for oral presentation. The  
16 head of the promulgating agency or 1 or more persons designated  
17 by the head of the agency, who has knowledge of the subject  
18 matter of the proposed substantive rule, shall be present at the  
19 public hearing and shall participate in the discussion of the  
20 proposed rule.

21       Sec. 43. (1) A substantive rule promulgated after the  
22 effective date of this act is not valid unless processed in sub-  
23 stantial compliance with sections 41 and 42. However, inadver-  
24 tent failure to give notice to any person as required by section  
25 41 does not invalidate a rule processed under section 41.

26       (2) A proceeding to contest a substantive rule on the ground  
27 of noncompliance with the procedural requirements of sections 41

1 and 42 shall be commenced within 2 years after the effective date  
2 of the rule.

3     Sec. 44. Sections 41 and 42 do not apply to an amendment or  
4 rescission of a rule that is obsolete or superseded, or that is  
5 required to make an obviously needed correction to make the rule  
6 conform to an amended or new statute or to accomplish any other  
7 solely formal purpose, if a statement to that effect is included  
8 in the legislative service bureau certificate of approval of the  
9 rule.

10     Sec. 45. (1) The legislative service bureau shall promptly  
11 approve a proposed substantive rule if the bureau considers the  
12 proposed rule to be proper as to all matters of form, classifica-  
13 tion, arrangement, and numbering. The department of the attorney  
14 general shall promptly approve a proposed substantive rule if the  
15 department considers the proposed rule to be legal.

16     (2) After the legislative service bureau and attorney gen-  
17 eral have approved a proposed substantive rule, and after publi-  
18 cation of the proposed rule in the Michigan register as provided  
19 in this act, but within 2 years after the date of the last public  
20 hearing on the proposed rule, unless the proposed rule is resub-  
21 mitted under subsection (8), and before the agency has formally  
22 adopted the rule, the agency shall transmit by letter copies of  
23 the rule bearing certificates of approval and copies of the rule  
24 without certificates to the committee.

25     (3) After receipt of the agency's letter of transmittal, the  
26 committee has 2 months in which to consider the rule. If the  
27 committee by a majority vote determines that additional time is

1 needed to consider 1 or more proposed rules, the committee may  
2 extend the time it has to consider a particular proposed rule by  
3 1 month to a total of not longer than 3 months. This subsection  
4 and subsection (2) do not apply to an emergency rule promulgated  
5 under section 48.

6 (4) If the committee approves the proposed rule within the  
7 time period provided by subsection (3), the committee shall  
8 attach a certificate of its approval to all copies of the rule  
9 bearing certificates except 1 and transmit those copies to the  
10 agency.

11 (5) If the committee disapproves the proposed rule within  
12 the time period provided by subsection (3) or the committee  
13 chairperson certifies an impasse after votes for approval and  
14 disapproval have failed to receive concurrent majorities, the  
15 committee shall immediately report that fact to the legislature  
16 and return the rule to the agency. The agency shall not adopt or  
17 promulgate the rule unless 1 of the following occurs:

18 (a) The legislature adopts a concurrent resolution approving  
19 the rule within 60 days after the committee report has been  
20 received by, and read into the respective journal of, each  
21 house.

22 (b) The committee subsequently approves the rule.

23 (6) If the time permitted by this section expires and the  
24 committee has not taken action under either subsection (4) or  
25 (5), then the committee shall return the proposed rules to the  
26 agency. The chairperson and alternate chairperson shall cause  
27 concurrent resolutions approving the rule to be introduced in



1 both houses simultaneously. The concurrent resolutions shall be  
2 placed directly on the calendar of each house. The agency shall  
3 not adopt or promulgate the rule unless 1 of the following  
4 occurs:

5 (a) The legislature adopts a concurrent resolution approving  
6 the rule within 60 days after introduction by record roll call  
7 vote. Adoption of the concurrent resolution requires a majority  
8 of the members elected to and serving in each house.

9 (b) The agency resubmits the proposed rule to the committee  
10 and the committee approves the rule within the time permitted by  
11 this section.

12 (7) An agency may withdraw a proposed rule by leave of the  
13 committee. An agency may resubmit a rule so withdrawn or  
14 returned under subsection (6) with minor modification or with  
15 changes suggested by the committee after a committee meeting on  
16 the proposed rule. A resubmitted rule is a new filing and  
17 subject to this section but is not subject to further notice and  
18 hearing as provided in sections 41 and 42.

19 (8) If the committee approves the proposed rule within the  
20 time period provided by subsection (3), or the legislature adopts  
21 a concurrent resolution approving the rule, the agency, if it  
22 wishes to proceed, shall formally adopt the rule pursuant to any  
23 applicable statute and make a written record of the adoption.  
24 Certificates of approval and adoption shall be attached to at  
25 least 6 copies of the rule.

26 Sec. 46. (1) To promulgate a substantive rule, an agency  
27 shall file in the office of the secretary of state 3 copies of

1 the rule bearing the required certificates of approval and  
2 adoption and true copies of the rule without the certificates.  
3 An agency shall not file a rule, except an emergency rule under  
4 section 48, until at least 10 days after the date of the certifi-  
5 cate of approval by the committee or after the legislature adopts  
6 a concurrent resolution approving the rule. An agency shall  
7 transmit a copy of the rule bearing the required certificates of  
8 approval and adoption to the office of the governor at least 10  
9 days before it files the rule.

10 (2) The secretary of state shall indorse the date and hour  
11 of filing of rules on the 3 copies of the filing bearing the cer-  
12 tificates and shall maintain a file containing 1 copy for public  
13 inspection.

14 (3) The secretary of state, as often as advisable, shall  
15 cause to be arranged and bound in a substantial manner the sub-  
16 stantive rules filed after the effective date of this act in his  
17 or her office with their attached certificates and published in a  
18 supplement to the Michigan administrative code. He or she shall  
19 certify under his or her hand and seal of the state on the fron-  
20 tispiece of each volume that it contains all of the rules filed  
21 and published for a specified period. The rules, when so bound  
22 and certified, shall be kept in the office of the secretary of  
23 state, and no further record of the rules is required to be  
24 kept. The bound rules are subject to public inspection.

25 Sec. 47. (1) Except in case of a rule processed under sec-  
26 tion 48, a substantive rule takes effect on the date fixed in the  
27 rule, which shall not be earlier than 15 days after the date of

1 its promulgation, or if a date is not fixed, then on the date of  
2 its publication in the Michigan administrative code or a supple-  
3 ment to the code.

4       (2) Except in case of a rule processed under section 48, an  
5 agency may withdraw a promulgated rule that has not taken effect  
6 by a written request stating the agency's reasons either to the  
7 secretary of state on or before the last day for filing rules for  
8 the interim period in which the rules were first filed or to the  
9 secretary of state and the legislative service bureau, within a  
10 reasonable time as determined by the bureau, after the last day  
11 for filing and before publication of the rule in the next supple-  
12 ment to the code. In any other case an agency may abrogate its  
13 rule only by rescission. When an agency has withdrawn a promul-  
14 gated rule, it shall give notice, stating reasons, to the joint  
15 committee on administrative rules that the rule has been  
16 withdrawn.

17       Sec. 48. (1) If an agency finds that preservation of the  
18 public health, safety, welfare, or financial resources entrusted  
19 to the agency requires promulgation of an emergency substantive  
20 rule without following the notice and participation procedures  
21 required by sections 41 and 42 and states in the rule the  
22 agency's reasons for that finding, and the governor concurs in  
23 the finding of emergency, the agency may dispense with all or  
24 part of the procedures and file in the office of the secretary of  
25 state the copies prescribed by section 46 indorsed as an emer-  
26 gency rule, to 3 of which copies shall be attached the  
27 certificates prescribed by section 45 and the governor's

1 certificate concurring in the finding of emergency. The  
2 emergency rule takes effect on filing and remains in effect until  
3 a date fixed in the rule or 6 months after the date of its  
4 filing, whichever is earlier. The rule may be extended once for  
5 not more than 6 months by the filing of a governor's certificate  
6 of the need for the extension with the office of the secretary of  
7 state before expiration of the emergency rule. If an extension  
8 is sought, the agency shall inform the committee of the status of  
9 efforts to develop substantive rules regarding the subject matter  
10 of the emergency rules. An emergency rule shall not be numbered  
11 or compiled in the Michigan administrative code, but shall be  
12 noted in the annual supplement to the code. The emergency rule  
13 shall be published in the Michigan register pursuant to section  
14 21.

15 (2) An agency may adopt a procedural rule under subsection  
16 (1), but any procedural rule so adopted shall be effective for  
17 not more than 120 days.

18 (3) If the agency desires to promulgate an identical or sim-  
19 ilar rule with an effectiveness beyond the final effective date  
20 of an emergency rule, the agency shall comply with the procedures  
21 prescribed by this act for the processing of a rule that is not  
22 an emergency rule. The rule shall be published in the Michigan  
23 register and in the code.

24 (4) The legislature by a concurrent resolution may rescind  
25 an emergency rule promulgated pursuant to this section.

26 Sec. 49. (1) The secretary of state shall immediately  
27 transmit or mail, after copies of substantive rules are filed in

1 his or her office, copies on which the day and hour of the filing  
2 have been indorsed, as follows:

3 (a) To the secretary of the joint committee on administra-  
4 tive rules and the legislative service bureau.

5 (b) To the secretary of the senate and the clerk of the  
6 house of representatives for distribution by them to each member  
7 of the senate and the house of representatives. When the legis-  
8 lature is not in session, or is in session but will not meet for  
9 more than 10 days after the secretary and clerk have received the  
10 rules, the secretary and clerk shall mail a copy to each member  
11 of the legislature at his or her home address.

12 (2) The secretary of the senate and clerk of the house of  
13 representatives shall present the rules to the senate and the  
14 house of representatives.

15 Sec. 50. When the legislature is in session, the joint com-  
16 mittee shall notify the appropriate standing committee of each  
17 house of the legislature when substantive rules have been trans-  
18 mitted to the committee by the secretary of state. If the joint  
19 committee determines that a hearing on the rules is to be held,  
20 it shall notify the chairpersons of the standing committees, and  
21 all members of the standing committees may be present and take  
22 part in the hearing. The chairperson or a designated member of  
23 the standing committee should be present at the hearing, but the  
24 absence of the chairperson or designated member does not affect  
25 the validity of the hearing.

26 Sec. 51. If the joint committee on administrative rules, an  
27 appropriate standing committee, or a member of the legislature

1 believes that a promulgated substantive rule or any part of such  
2 a rule is unauthorized, is not within legislative intent, or is  
3 inexpedient, the committee or member may do either or both of the  
4 following:

5       (a) Introduce a concurrent resolution at a regular or spe-  
6 cial session of the legislature expressing the determination of  
7 the legislature that the rule should be amended or rescinded.  
8 Adoption of the concurrent resolution constitutes legislative  
9 disapproval of the rule, but rejection of the resolution does not  
10 constitute legislative approval of the rule.

11       (b) Introduce a bill at a regular session, or special ses-  
12 sion if included in a governor's message, which amends or  
13 rescinds the rule.

14       Sec. 52. If authorized by concurrent resolution of the leg-  
15 islature, the joint committee on administrative rules, acting  
16 between regular sessions, may suspend a substantive rule or a  
17 part of a rule promulgated during the interim between regular  
18 sessions. The committee shall notify the agency promulgating the  
19 rule, the secretary of state, the department of management and  
20 budget, and the legislative service bureau of any rule or part of  
21 a rule the joint committee suspends, and the rule or part of a  
22 rule shall not be published in the Michigan register or in the  
23 Michigan administrative code while suspended. A rule suspended  
24 by the committee continues to be suspended until the end of the  
25 next regular session.

## ARTICLE 4

## PROCEDURES IN CONTESTED CASES

1  
2  
3       Sec. 71. (1) The parties in a contested case shall be given  
4 an opportunity for a hearing without undue delay. A hearing  
5 shall be open to the public unless, on the request of a party,  
6 the agency finds and includes as a sealed part of the record,  
7 that an open hearing would constitute an unwarranted invasion of  
8 personal privacy, or would result in the disclosure of trade  
9 secrets or proprietary information, which outweighs the public  
10 interest in open hearings.

11       (2) A contested case may be commenced by a person filing an  
12 administrative complaint or petition for hearing, or by the  
13 agency giving notice. The complaint, petition, or notice shall  
14 include all of the following applicable information:

15       (a) The names of all parties.

16       (b) A statement of the legal authority and jurisdiction  
17 under which relief or action is sought.

18       (c) A reference to the particular sections of the statutes  
19 and rules involved.

20       (d) A short and plain statement of the matters asserted. If  
21 the agency or person is unable to state the matter in detail at  
22 the time the complaint, petition, or notice is provided, the ini-  
23 tial complaint, petition, or notice may state the issues  
24 involved. Thereafter, on application, the agency or other person  
25 shall furnish a more definite and detailed statement on the  
26 issues.

1 (e) If the matter is commenced by a notice of hearing, a  
2 statement of the date, hour, place, and nature of the hearing.

3 (3) Unless otherwise specified by the agency, the hearing  
4 shall be held at its principal office.

5 (4) Unless otherwise provided by statute or procedural rule,  
6 service of notice shall be by personal service or certified mail  
7 upon return receipt. Upon a claim of improper service of notice,  
8 the agency may show actual notice of the hearing, provided that  
9 the notice actually provided meets all the provisions of subsec-  
10 tion (2). If the agency determines that actual notice does not  
11 result in material prejudice to a party, the agency may proceed  
12 with the hearing.

13 (5) A member of the legislature shall not be privileged from  
14 service of notice or other process pursuant to this article  
15 except on a day on which there is a scheduled meeting of the  
16 house of which he or she is a member. However, a member of the  
17 legislature shall not be privileged from service of notice or  
18 other process pursuant to this article on a day on which there is  
19 a scheduled meeting of the house of which he or she is a member,  
20 if the service of notice or process is executed by certified mail  
21 upon return receipt.

22 (6) A party who has been served with an administrative com-  
23 plaint, petition, or notice of hearing may file a written answer  
24 before the date set for hearing.

25 (7) If a party fails to appear in a contested case after  
26 proper service of notice, the agency, if no adjournment is  
27 granted, may proceed with the hearing and make its decision in



1 the absence of the party. An agency may by procedural rule  
2 establish procedures for the entry of default orders when a party  
3 fails to appear or fails to file an answer, if the agency's pro-  
4 cedural rules require the filing of an answer. The procedures  
5 shall describe the type of case and the procedures under which  
6 default orders may issue, and shall set forth time limits and  
7 grounds on which orders entered upon default can be set aside.  
8 If a party who has filed an administrative complaint or a peti-  
9 tion fails to appear, the case may be dismissed.

10 (8) An agency may adopt procedural rules allowing for the  
11 service of notice, the filing of answers and other pleadings, and  
12 the submission of documents related to a contested case to be  
13 accomplished by facsimile transmission.

14 (9) Unless otherwise provided by statute or procedural rule,  
15 a party may appear in person or by or with counsel or other qual-  
16 ified representative.

17 Sec. 72. (1) An agency, 1 or more members of the agency, a  
18 person designated by statute, or 1 or more hearing officers des-  
19 igned and authorized by the agency to handle contested cases  
20 shall be a presiding officer in a contested case.

21 (2) A presiding officer in a contested case is not responsi-  
22 ble to or subject to the supervision or direction of an employee  
23 or agent engaged in the performance of investigative or prosecut-  
24 ing functions for an agency. This subsection does not apply to  
25 the individual who heads the agency or to a member or members of  
26 the body that heads the agency.

1       (3) A hearing shall be conducted in an impartial manner. A  
2 presiding officer is subject to disqualification for personal  
3 bias, prejudice, interest, or any other cause for which a judge  
4 may be disqualified. On the filing in good faith by a party of a  
5 timely and sufficient affidavit of disqualification of a presid-  
6 ing officer, the agency shall determine the matter as a part of  
7 the record in the case, and its determination is subject to judi-  
8 cial review at the conclusion of the proceeding. If a presiding  
9 officer is disqualified or it is impractical for the presiding  
10 officer to continue the hearing, another presiding officer may be  
11 assigned to continue with the case unless it is shown that sub-  
12 stantial prejudice to a party will result from the assignment.

13       (4) A presiding officer may do all of the following:

14       (a) Administer oaths and affirmations.

15       (b) Sign and issue subpoenas in the name of the agency,  
16 requiring attendance and giving of testimony by witnesses, and  
17 the production of books, papers, and other documentary evidence.

18       (c) Provide for the taking of testimony by deposition.

19       (d) Regulate the course of the hearings, set the time and  
20 place for continued hearings, and fix the time for filing of  
21 briefs and other documents.

22       (e) Direct the parties to appear at 1 or more prehearing  
23 conferences and to confer and to consider simplification of the  
24 issues by consent of the parties.

25       (f) Except as otherwise provided by law, dispose of the case  
26 by stipulation, agreed settlement, consent order, waiver,  
27 default, or other method agreed on by the parties.

1 (g) Summarily dispose of a case in which there are no  
2 contested facts.

3 (5) The following provisions apply to petitions for  
4 intervention:

5 (a) A presiding officer shall grant a petition for interven-  
6 tion if all of the following apply:

7 (i) The petition is submitted in writing to the presiding  
8 officer, with copies mailed to all parties named in the notice of  
9 hearing, at least 7 days before the hearing.

10 (ii) The petition states facts demonstrating that the  
11 petitioner's legal rights, duties, privileges, immunities, or  
12 other legal interests may be substantially affected by the pro-  
13 ceeding or that the petitioner qualifies as an intervenor under  
14 any law.

15 (iii) The presiding officer determines that the interests of  
16 justice and the orderly and prompt conduct of the proceedings  
17 will not be impaired by allowing intervention.

18 (b) A presiding officer may grant a petition for interven-  
19 tion at any time upon determining that the intervention sought is  
20 in the interests of justice, is timely in view of the stage of  
21 the proceedings at the time of the petition for intervention, and  
22 will not impair the orderly and prompt conduct of the  
23 proceedings.

24 (c) If a petitioner qualifies for intervention, the presid-  
25 ing officer may impose conditions upon the intervenor's partici-  
26 pation in the proceedings, either at the time that intervention

1 is granted or at any subsequent time. Conditions may include any  
2 of the following:

3 (i) Limiting the intervenor's participation to designated  
4 issues in which the intervenor has a particular interest demon-  
5 strated by the petition.

6 (ii) Limiting the intervenor's use of discovery,  
7 cross-examination, or other procedures so as to promote the  
8 orderly and prompt conduct of the proceedings.

9 (iii) Requiring 2 or more intervenors to combine their pre-  
10 sentations of evidence and argument, cross-examination, discov-  
11 ery, or other participation in the proceedings.

12 (iv) Limiting participation to the filing of briefs.

13 (d) A presiding officer, at least 48 hours before the hear-  
14 ing, shall issue an order granting or denying each pending peti-  
15 tion for intervention submitted under subdivision (a), specifying  
16 any conditions and briefly stating the reasons for the order. A  
17 presiding officer shall state on the record before the proceeding  
18 begins an order granting or denying each pending petition for  
19 intervention submitted under subdivision (b), specifying any con-  
20 ditions and briefly stating the reasons for the order. A presid-  
21 ing officer may modify the order at any time, stating reasons for  
22 modification. A presiding officer may reverse an order granting  
23 intervention at any time, if the presiding officer determines  
24 that the facts presented during the course of the proceeding do  
25 not substantiate the claims set forth in the petition to  
26 intervene. A presiding officer shall promptly give notice of an

1 order granting, denying, modifying, or reversing intervention to  
2 the petitioner for intervention and to all parties.

3 (e) The provisions of this section apply to all petitions or  
4 other requests to intervene except as a provision is contrary to  
5 a statute pertaining to intervention in a contested case con-  
6 ducted under that statute.

7 (6) In order to assure adequate representation for the  
8 people of this state, all of the following apply:

9 (a) If the presiding officer knows that a party in a con-  
10 tested case is a member of the legislature of this state, and the  
11 legislature is in session, the contested case shall be continued  
12 by the presiding officer to a nonmeeting day.

13 (b) If the presiding officer knows that a party to a con-  
14 tested case is a member of the legislature of this state who  
15 serves on a legislative committee, subcommittee, commission, or  
16 council that is scheduled to meet during the legislative session  
17 while the legislature is temporarily adjourned, or that is sched-  
18 uled to meet during the interim between legislative sessions  
19 after the legislature has adjourned sine die, or when the parti-  
20 san caucus of which the legislator is a member is scheduled to  
21 meet, the contested case shall be continued to a nonmeeting day.

22 (c) If the presiding officer knows that a witness in a con-  
23 tested case is a member of the legislature of this state, and the  
24 legislature is in session, or the member is serving on a legisla-  
25 tive committee, subcommittee, commission, or council that is  
26 scheduled to meet during the legislative session while the  
27 legislature is temporarily adjourned or during the interim

1 between legislative sessions after the legislature has adjourned  
2 sine die, or when the partisan caucus of which the legislator is  
3 a member is scheduled to meet, the contested case need not be  
4 continued, but the taking of the legislator's testimony, as a  
5 witness, shall be postponed to the earliest practicable nonmeet-  
6 ing day. The presiding officer may also provide that the testi-  
7 mony be taken by deposition.

8 (7) As used in subsection (6), "nonmeeting day" means a day  
9 on which there is not a scheduled meeting of the house of which  
10 the party or witness is a member, nor a legislative committee  
11 meeting or public hearing scheduled by a committee, subcommittee,  
12 commission, or council of which he or she is a member, nor a  
13 scheduled partisan caucus of the members of the house of which he  
14 or she is a member.

15 Sec. 73. When a written request for issuance of a subpoena  
16 is made by a party in a contested case, an agency authorized by  
17 statute to issue subpoenas shall immediately issue, as necessary,  
18 1 or more subpoenas requiring the attendance and testimony of  
19 witnesses and the production of evidence including books,  
20 records, correspondence, and documents in their possession or  
21 under their control. On written request, the agency shall revoke  
22 a subpoena if the evidence, the production of which is required,  
23 does not relate to a matter in issue, or if the subpoena does not  
24 describe with sufficient particularity the evidence the produc-  
25 tion of which is required, or if for any other reason sufficient  
26 in law the subpoena is invalid. Witness fees shall be paid to  
27 subpoenaed witnesses in accordance with section 2552 of the

1 revised judicature act of 1961, Act No. 236 of the Public Acts of  
2 1961, being section 600.2552 of the Michigan Compiled Laws. If a  
3 person refuses to comply with a subpoena, the party on whose  
4 behalf it was issued may file a petition, in the circuit court  
5 for Ingham county or for the county in which the agency hearing  
6 is held, for an order requiring compliance.

7       Sec. 74. (1) An officer of an agency may administer an oath  
8 or affirmation to a witness in a matter before the agency, cer-  
9 tify to official acts, and take depositions.

10       (2) An agency authorized or required to adjudicate contested  
11 cases may adopt procedural rules to govern the administration of  
12 its contested case hearings, including, but not limited to, pro-  
13 cedural rules for discovery and depositions, to the extent and in  
14 the manner appropriate to its proceedings.

15       (3) The parties in a contested case, by a stipulation in  
16 writing filed with the agency, may agree upon any fact involved  
17 in the controversy, which stipulation shall be used as evidence  
18 at the hearing and be binding on the parties.

19       (4) On a request for identifiable agency records, with  
20 respect to 1 or more disputed material facts involved in a con-  
21 tested case, except records related solely to the internal proce-  
22 dures of the agency or that are exempt from disclosure under the  
23 freedom of information act, Act No. 442 of the Public Acts of  
24 1976, being sections 15.231 to 15.246 of the Michigan Compiled  
25 Laws, or by any other law, an agency shall make the records  
26 promptly available to a party.

1       Sec. 75. (1) Except as otherwise provided by statute, the  
2 proponent of a decision has the burden of going forward and the  
3 burden of proof. In matters subject to article 5, these burdens  
4 are on the applicant for an initial license, for a new license in  
5 regard to activity of a continuing nature, and for reinstatement  
6 of a license previously suspended or revoked, and in all other  
7 licensing matters, including the denial of the renewal of an  
8 existing license, these burdens are on the licensing agency. As  
9 used in this subsection, "burden of proof" means the preponder-  
10 ance of evidence as applied in civil cases in circuit court. The  
11 preponderance may include any evidence admitted under subsection  
12 (3) and need not be based solely upon evidence admissible under  
13 the Michigan rules of evidence.

14       (2) The parties shall have an opportunity to present oral  
15 and written arguments on issues of law and policy and an opportu-  
16 nity to present evidence and arguments on issues of fact. The  
17 parties may submit rebuttal evidence.

18       (3) In a contested case, the Michigan rules of evidence  
19 shall be followed as far as practicable, but an agency may admit  
20 and give probative effect to evidence of a type commonly relied  
21 upon by reasonably prudent persons in the conduct of their  
22 affairs. Irrelevant, immaterial, or unduly repetitious evidence  
23 may be excluded. Effect shall be given to the rules of privilege  
24 recognized by law. An objection to an offer of evidence may be  
25 made and shall be noted in the record. Subject to these require-  
26 ments, an agency, for the purpose of expediting hearings and when  
27 the interests of the parties will not be substantially prejudiced



1 thereby, may provide in a contested case or by procedural rule  
2 for submission of all or part of the evidence in written form.

3 (4) A deposition may be used instead of other evidence when  
4 taken in compliance with the Michigan court rules.

5 (5) A party may cross-examine a witness, including the  
6 author of a document prepared by, on behalf of, or for the use of  
7 the agency and offered in evidence.

8 (6) An agency that relies on a witness in a contested case,  
9 whether or not an agency employee, who has made prior statements  
10 or reports with respect to the subject matter of that testimony,  
11 shall make the statements or reports available to opposing par-  
12 ties for use on cross-examination.

13 (7) Evidence in a contested case, including records and doc-  
14 uments in possession of an agency of which it desires to avail  
15 itself, shall be offered and made a part of the record. Other  
16 factual information or evidence shall not be considered in the  
17 determination of the case, except as permitted under subsection  
18 (8). Documentary evidence may be received in the form of a copy  
19 or excerpt if the original is not readily available, or may be  
20 incorporated by reference if the materials incorporated are  
21 available for examination by the parties. Upon timely request, a  
22 party shall be given an opportunity to compare the copy with the  
23 original when available.

24 (8) An agency in a contested case may take official notice  
25 of judicially cognizable facts and of general, technical, or sci-  
26 entific facts within the agency's specialized knowledge. The  
27 agency shall notify parties at the earliest practicable time of

1 any noticed fact that pertains to a material disputed issue that  
2 is being adjudicated, and on timely request, the parties shall be  
3 given an opportunity before final decision to dispute the fact or  
4 its materiality. An agency may use its experience, technical  
5 competence, and specialized knowledge in the evaluation of evi-  
6 dence presented to it.

7 Sec. 76. (1) As used in this section:

8 (a) "Developmental disability" means an impairment of gen-  
9 eral intellectual functioning or adaptive behavior that meets all  
10 of the following criteria:

11 (i) It originated before the person became 18 years of age.

12 (ii) It has continued since its origination or can be  
13 expected to continue indefinitely.

14 (iii) It constitutes a substantial burden to the impaired  
15 person's ability to perform normally in society.

16 (iv) It is attributable to mental retardation, autism, or  
17 any other condition of a person found related to mental retarda-  
18 tion because it produces a similar impairment or requires treat-  
19 ment and services similar to those required for a person who is  
20 mentally retarded.

21 (b) "Psychological abuse" means an injury to a child's  
22 mental condition or welfare that is not necessarily permanent but  
23 results in substantial and protracted visibly demonstrable mani-  
24 festations of mental distress.

25 (c) "Witness" means an alleged victim under subsection (2)  
26 who is either of the following:

1 (i) A person less than 15 years of age.

2 (ii) A person 15 years of age or older with a developmental  
3 disability.

4 (2) This section applies only to a contested case in which a  
5 witness testifies as an alleged victim of sexual, physical, or  
6 psychological abuse.

7 (3) If pertinent, the witness shall be permitted the use of  
8 dolls or mannequins, including, but not limited to, anatomically  
9 correct dolls or mannequins, to assist the witness in  
10 testifying.

11 (4) A witness who is called upon to testify shall be permit-  
12 ted to have a support person sit with, accompany, or be in close  
13 proximity to the witness during the witness's testimony. A  
14 notice of intent to use a support person shall name the support  
15 person, identify the relationship the support person has with the  
16 witness, and give notice to all parties to the proceeding that  
17 the witness may request that the named support person sit with  
18 the witness when the witness is called upon to testify during any  
19 stage of the proceeding. The notice of intent to use a named  
20 support person shall be served upon all parties to the  
21 proceeding. The agency shall rule on any objection to the use of  
22 a named support person before the date at which the witness  
23 desires to use the support person.

24 (5) In a hearing under this section, all persons not neces-  
25 sary to the proceeding shall be excluded during the witness's  
26 testimony.

1 (6) This section is in addition to other protections or  
2 procedures afforded to a witness by law or court rule.

3 Sec. 81. (1) When an agency, person, or body authorized to  
4 make a final decision by statute or rule is present throughout or  
5 presides during a contested case, the agency, person, or body so  
6 authorized shall make the final decision in the case. No initial  
7 or other preliminary form of decision is required.

8 (2) In each contested case in which the agency did not pre-  
9 side, the presiding officer shall make an initial decision which  
10 shall become the final decision unless appealed to or reviewed by  
11 the agency.

12 (3) A decision in a contested case, whether initial or  
13 final, shall be made within a reasonable period, in writing or  
14 stated in the record and shall include findings of fact, conclu-  
15 sions of law, and statements of policy supporting the decision,  
16 if the decision represents an exercise of the agency's  
17 discretion. The decision shall consider the whole record or  
18 those portions of the record that are cited by the parties to the  
19 proceeding as relevant to the decision.

20 (4) Findings of fact shall be based exclusively on the evi-  
21 dence and on matters officially noticed. Findings of fact set  
22 forth in statutory language shall be accompanied by a concise and  
23 explicit statement of the underlying facts supporting them. A  
24 presiding officer has discretion to permit a party to submit pro-  
25 posed findings of fact and conclusions of law. If proposed find-  
26 ings of fact and conclusions of law are submitted, the decision  
27 shall include a ruling on each proposed finding of fact that

1 would control the decision and on each proposed conclusion of  
2 law.

3 (5) A copy of each initial or final decision shall immedi-  
4 ately be delivered or mailed to each party and to each attorney  
5 of record.

6 (6) Unless required for disposition of an ex parte matter  
7 authorized by law, a presiding officer, member, or employee of an  
8 agency assigned to make a decision in a case or to assist the  
9 agency in making a decision in a case, and the deciding authority  
10 in the agency shall not communicate, directly or indirectly, in  
11 connection with any issue of fact, with any person or party, nor,  
12 in connection with any issue of law, with any party or his or her  
13 representative, except on notice and opportunity for all parties  
14 to participate. This prohibition begins at the time of the  
15 notice of hearing. An agency member may communicate with other  
16 members of the agency and may have the aid and advice of agency  
17 staff other than the staff that has been or is engaged in inves-  
18 tigating or prosecuting functions in connection with the case  
19 under consideration or a factually related case. This subsection  
20 does not apply to an agency employee or party representative with  
21 professional training in accounting, actuarial science, econom-  
22 ics, financial analysis, or rate-making in a contested case  
23 before the financial institutions bureau, the insurance bureau,  
24 or the public service commission insofar as the case involves  
25 rate-making or financial practices or conditions.

26 Sec. 82. (1) Except as otherwise provided by statute, an  
27 initial decision is subject to review by the agency on its own

1 motion or upon appeal by any party. A motion to review or a  
2 notice of appeal shall be submitted to the agency within 30 days  
3 after the date of receipt of the initial decision of the agency,  
4 unless the agency adopts a procedural rule establishing a differ-  
5 ent time limitation.

6 (2) A party appealing the initial decision shall submit the  
7 content of the appeal to the agency within 30 days after the sub-  
8 mission of the notice of appeal. The appeal shall state all  
9 exceptions to the initial decision and any written arguments con-  
10 cerning the findings of fact, conclusions of law, and statements  
11 of policy that the appealing party chooses to present. All other  
12 parties wishing to participate in the appeal have 30 days after  
13 their receipt of the appeal to submit their arguments in writing  
14 to the agency.

15 (3) The agency may permit oral argument under any conditions  
16 or limitations it determines.

17 (4) On review or appeal of an initial decision, the agency  
18 has all the powers it would have if it had presided at the hear-  
19 ing except that it shall not hear or accept new evidence. If the  
20 agency believes that new evidence should be taken or that evi-  
21 dence was improperly excluded at the hearing, the agency shall  
22 remand the matter to the presiding officer who shall reopen the  
23 hearing for the limited purpose of taking the new testimony and  
24 hearing any additional argument regarding the effect of the new  
25 evidence as is appropriate. The presiding officer shall then  
26 give the new evidence the consideration it would have been  
27 accorded had it been presented in the original hearing and shall

1 either affirm the original decision or prepare a new or revised  
2 initial decision. The agency shall then review the initial deci-  
3 sion in light of the exceptions and arguments presented.

4 (5) The agency shall make a final decision by affirming the  
5 initial decision in writing or on the record, or, if not affirm-  
6 ing the initial decision, by stating its decision in writing or  
7 on the record.

8 (6) The agency may adopt substantive rules to change the  
9 procedures for review of initial decisions.

10 Sec. 83. (1) An agency shall prepare an official record of  
11 a hearing that shall include, as appropriate, all of the  
12 following:

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

14 (b) Questions and offers of proof, objections, and rulings  
15 thereon.

16 (c) Evidence presented.

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

19 (e) Exceptions and arguments submitted on appeal of the ini-  
20 tial decision.

21 (f) The initial and final decision in the case.

22 (2) Oral proceedings at which evidence is presented shall be  
23 recorded and transcribed unless the agency determines by proce-  
24 dural rule that transcripts shall be available only upon request  
25 of a party. The agency may charge a reasonable fee for each copy  
26 of a transcript or a portion of a transcript that it provides to  
27 a requesting party. If the agency chooses not to have a

1 transcription made, a party may request the transcription at the  
2 party's expense, but the agency shall pay for a proportional  
3 share of the transcription costs if it requests a copy. An  
4 agency required to furnish the transcript of a contested case  
5 hearing under the freedom of information act, Act No. 442 of the  
6 Public Acts of 1976, being sections 15.231 to 15.246 of the  
7 Michigan Compiled Laws, may charge a reasonable portion of the  
8 transcription costs to the requesting person.

9       Sec. 84. (1) If for justifiable reasons the record of tes-  
10 timony given at a hearing is found by the agency to be inadequate  
11 for purposes of a final decision by the agency or for judicial  
12 review, the agency, on its own motion or on request of a party,  
13 shall order a rehearing in whole or in relevant part.

14       (2) A request for a rehearing shall be filed within the time  
15 limits fixed by this act for instituting judicial review unless a  
16 different time is fixed for judicial review by statute, which  
17 time shall then control the time for a request. A rehearing  
18 shall be noticed and conducted in the same manner as an original  
19 hearing. The evidence received at the rehearing shall be  
20 included in the record for agency reconsideration and for judi-  
21 cial review. A decision or order may be amended or vacated after  
22 the rehearing.

23       Sec. 85. On request of an interested person, an agency may  
24 issue a declaratory order as to the applicability to an actual  
25 state of facts of a statute administered by the agency or of a  
26 rule or order of the agency. An agency shall prescribe by  
27 procedural rule the form for such a request, the procedure for



1 its submission, consideration, and disposition, and the time  
2 limits within which the agency will deny or issue a declaratory  
3 order. In the absence of a procedural rule establishing a time  
4 limit for action, a request for a declaratory order shall be con-  
5 sidered to be denied 90 days after it is received by the agency.  
6 A declaratory order is binding on the agency and the person  
7 requesting it unless it is altered or set aside by any court. An  
8 agency may not retroactively change a declaratory order, but this  
9 section does not prevent an agency from prospectively changing a  
10 declaratory order. A declaratory order is subject to judicial  
11 review in the same manner as an agency final decision or order in  
12 a contested case. A decision not to issue a declaratory order is  
13 not subject to judicial review.

14       Sec. 86. This article does not apply to a hearing conducted  
15 by the department of corrections pursuant to chapter IIIA of Act  
16 No. 232 of the Public Acts of 1953, being sections 791.251 to  
17 791.255 of the Michigan Compiled Laws.

18                               ARTICLE 5

19                               LICENSES

20       Sec. 91. (1) When licensing is required by statute or con-  
21 stitution to be preceded by notice and an opportunity for hear-  
22 ing, the provisions of this act governing a contested case  
23 apply. The agency, by procedural rule, may provide that initial  
24 licensing or other activity related to licensing is subject to  
25 the provisions of this act governing a contested case or to those  
26 portions of the provisions governing a contested case as the  
27 agency, in its discretion, considers appropriate.

1       (2) When a licensee applies in a timely and sufficient  
2 manner for renewal of a license or for a new license with refer-  
3 ence to activity of a continuing nature, the existing license  
4 does not expire until a decision on the application is finally  
5 made by the agency, and if the application is denied or the terms  
6 of the new license are limited, until the last day for applying  
7 for judicial review of the agency order or a later date fixed by  
8 order of the reviewing court. This subsection does not affect  
9 valid agency action then in effect summarily suspending a license  
10 under section 93.

11       (3) When an agency engages in licensing involving competing  
12 applications in circumstances in which the number of applications  
13 exceeds the number of licenses that can be granted, and the stat-  
14 ute requires that the licensing be preceded by notice and an  
15 opportunity for hearing, the agency shall not grant any license  
16 until a review is completed of all competing applications. If  
17 the circumstances require or permit, a single contested case  
18 hearing shall be provided in which all competing applicants are  
19 entitled to participate.

20       (4) An agency may provide by procedural rule that licenses  
21 based on applications for license subject to subsection (3) shall  
22 be awarded to qualified applicants in the order of receipt of  
23 applications within periods of application determined by the  
24 agency or by lot from all applications received within periods of  
25 application determined by the agency. This subsection does not  
26 apply if the statute requires that the license be awarded to the  
27 best or better applicant.

1       (5) An agency may eliminate an application before  
2 proceedings conducted under subsection (3) or (4) if it finds  
3 that the application is incomplete or insufficient, or that the  
4 applicant fails to meet the minimum requirements for licensing  
5 under the statute or agency rules. An applicant eliminated  
6 before the competitive proceedings established in subsection (3)  
7 or (4) shall be given an opportunity to exercise his or her stat-  
8 utory right to notice and hearing before the competitive  
9 proceedings. If the decision in a hearing held under this sub-  
10 section is that the application meets the minimum qualifications  
11 necessary for licensing under the statute, the application shall  
12 be included in the proceedings conducted under subsection (3) or  
13 (4).

14       (6) An agency that participates in licensing of competing  
15 applicants shall promulgate procedural rules for the administra-  
16 tion of the competitive proceedings, including the conduct of the  
17 competitive hearing.

18       Sec. 92. (1) Before commencement of proceedings for the  
19 suspension, revocation, annulment, withdrawal, recall, cancella-  
20 tion, or amendment of a license:

21       (a) The agency shall give written notice, personally or by  
22 mail, to the licensee of facts or conduct that warrants the  
23 intended action.

24       (b) The licensee shall be given an informal opportunity to  
25 show or achieve compliance with all lawful requirements for  
26 retention of the license. This opportunity need not be on the  
27 record, may be conducted by any representative of the agency,

1 including those who conducted the inspection or investigation  
2 that forms the basis of the agency's intended action, and may be  
3 conducted on the licensee's premises.

4 (c) After the informal opportunity to show compliance pro-  
5 vided under subdivision (b), the agency shall provide within a  
6 reasonable time a written summary of its determination. The  
7 determination shall include a concise statement of the facts or  
8 conduct that warrants any conclusion that the licensee is not in  
9 compliance with the relevant statutes or rules. This statement  
10 shall not be used instead of a notice of a contested case hearing  
11 if the agency decides to commence proceedings.

12 (d) An agency that determines that a licensee is not in com-  
13 pliance with all lawful requirements for retention of his or her  
14 license shall begin its contested case proceedings within a rea-  
15 sonable time after the determination of noncompliance unless the  
16 agency and the licensee agree in writing to extend the time to  
17 show compliance to a date certain, after which the contested case  
18 proceedings shall begin within a reasonable time or the agency  
19 shall issue a statement of compliance.

20 (2) Subsection (1) does not apply to any licensing in  
21 which:

22 (a) The provisions set forth in section 93 are invoked.

23 (b) The conduct of the licensee threatens the health,  
24 safety, or welfare of the public or of any person receiving serv-  
25 ices, housing, treatment, care, or support from the licensee.

1 (c) The conduct of the licensee constitutes a pattern of  
2 intentional and deliberate violation of the terms or conditions  
3 of the license.

4 (d) The conduct of the licensee is of a nature that current  
5 or future compliance would be irrelevant to the determination of  
6 whether to suspend, revoke, annul, withdraw, recall, cancel, or  
7 amend the license.

8 (3) The agency shall include in the notice of hearing in any  
9 ensuing contested case a concise statement of the facts and law  
10 justifying its decision to invoke any provision of subsection  
11 (2). The determination of the agency to invoke the provisions of  
12 subsection (2) are not reviewable by any court, but this subsec-  
13 tion does not prohibit judicial review of the failure of an  
14 agency to provide the informal opportunity to show or achieve  
15 compliance for any other reason.

16 Sec. 93. If an agency has reasonable grounds to believe  
17 that the conduct of a licensee threatens the health, safety, or  
18 welfare of the public or of any person receiving services, hous-  
19 ing, treatment, care, or support from a licensee, and determines  
20 that those grounds justify emergency action, it may summarily  
21 suspend a license. The suspension shall take effect upon the  
22 date of the order or the date of service of the order upon the  
23 licensee, whichever is later, and shall remain in effect during  
24 the course of the proceedings. An order summarily suspending a  
25 license shall include a concise statement of the facts and law  
26 justifying the order. An agency decision to proceed summarily  
27 may be based upon any facts it regards to be sufficient to

1 implicate the public health, safety, or welfare, or the health,  
2 safety, or welfare of persons receiving services, housing, treat-  
3 ment, care, or support from the licensee. The facts relied upon  
4 need not meet the requirements of the rules of evidence provided  
5 for contested cases, nor must the decision be based upon a pre-  
6 ponderance of evidence. The proceedings shall be promptly com-  
7 menced and determined. Upon judicial review of a final licensing  
8 decision, the court shall not apply the provisions of section 106  
9 (1)(f) to the decision of the agency to proceed under this  
10 section.

## 11 ARTICLE 6

### 12 JUDICIAL REVIEW

13 Sec. 101. (1) Unless an exclusive procedure or remedy is  
14 provided by a statute governing the agency, the validity or  
15 applicability of a rule may be determined in an action for  
16 declaratory judgment when the court finds that the rule or its  
17 threatened application interferes with or impairs, or imminently  
18 threatens to interfere with or impair, the legal rights or privi-  
19 leges of the plaintiff. The action shall be filed in the circuit  
20 court for the county of the plaintiff's principal place of busi-  
21 ness in this state, for the county in which the plaintiff  
22 resides, or for the county of Ingham. The agency shall be made a  
23 party to the action. An action for declaratory judgment chal-  
24 lenging the applicability of a rule may not be commenced under  
25 this subsection unless the plaintiff has first requested the  
26 agency for a declaratory order under section 85 and the agency  
27 has denied the request or failed to act on it expeditiously.

1 This subsection shall not be construed to prohibit the  
2 determination of the validity or applicability of the rule in any  
3 other action or proceeding in which its invalidity or inapplica-  
4 bility is asserted.

5       (2) When a person has exhausted all administrative remedies  
6 available within an agency and is aggrieved by final agency  
7 action as defined in section 2(d), whether that action is affir-  
8 mative or negative in form, the agency action is subject to  
9 direct review by the courts as provided by law and, in the  
10 absence of such a provision, as provided by this article.

11 Exhaustion of administrative remedies does not require the filing  
12 of a motion or application for rehearing or reconsideration  
13 unless the agency rules require the filing before judicial review  
14 is sought. A preliminary, procedural, or intermediate agency  
15 action or ruling is not immediately reviewable, except that a  
16 court may grant leave for review of the action if review of the  
17 agency's final decision or order would not provide an adequate  
18 remedy.

19       Sec. 102. Judicial review of final agency action shall be  
20 by any applicable special statutory review proceeding in any  
21 court specified and in accordance with the general court rules.  
22 In the absence or inadequacy thereof, judicial review shall be by  
23 a petition for review in accordance with sections 103 to 105.

24       Sec. 103. (1) Except as provided in subsection (2), a peti-  
25 tion for review shall be filed in the circuit court for the  
26 county of the petitioner's principal place of business in this

1 state, for the county in which the petitioner resides, or for the  
2 county of Ingham.

3 (2) As used in this section, "adoptee" means a child who is  
4 to be or is adopted. In the case of an appeal from a final  
5 determination of the office of youth services within the depart-  
6 ment of social services regarding an adoption subsidy, a petition  
7 for review shall be filed:

8 (a) For an adoptee residing in this state, in the probate  
9 court for the county in which the petition for adoption was filed  
10 or in which the adoptee was found.

11 (b) For an adoptee not residing in this state, in the pro-  
12 bate court for the county in which the petition for adoption was  
13 filed.

14 (3) A petition for review shall contain a concise statement  
15 of all of the following:

16 (a) The nature of the action as to which review is sought.

17 (b) The factual background of the matter.

18 (c) The factual and legal grounds on which relief is  
19 sought.

20 (d) The relief sought.

21 (4) The petitioner shall attach to the petition, as an  
22 exhibit, a copy of the agency action of which review is sought.  
23 If the agency action was not reduced to written form, the peti-  
24 tioner shall attach to the petition, as an exhibit, an affidavit  
25 in accordance with the general court rules describing the agency  
26 action of which review is sought.



1       Sec. 104. (1) A petition shall be filed in the court within  
2 60 days after the date of mailing notice of the final agency  
3 action, or if a rehearing before the agency is timely requested,  
4 within 60 days after delivery or mailing notice of the decision  
5 or order of the final agency. If the agency action is the fail-  
6 ure to act, the petition shall be filed in the court within 180  
7 days after the date upon which the duty to act arose. The filing  
8 of the petition does not stay enforcement of the agency action,  
9 but the agency may grant, or the court may order, a stay upon  
10 appropriate terms.

11       (2) Within 60 days after service of the petition or within  
12 such further time as the court allows, the agency shall transmit  
13 to the court the original or certified copy of the entire record  
14 of the agency action, unless parties to the proceedings for judi-  
15 cial review stipulate that the record be shortened. If the  
16 action was not conducted as a hearing on the record, the agency  
17 shall transmit to the court an original or certified copy of its  
18 entire file relevant to the petition, unless the parties to the  
19 proceedings for judicial review stipulate that the record be  
20 shortened. A party unreasonably refusing to stipulate to short-  
21 ening the record may be taxed by the court for the additional  
22 costs. The court may permit subsequent corrections to the  
23 record.

24       (3) The review shall be conducted by the court without a  
25 jury and shall be confined to the record. In a case of alleged  
26 irregularity in procedure before the agency or in review of  
27 agency failure to act, not shown in the record, proof of such

1 irregularity or failure to act may be taken by the court. The  
2 court, on request, shall hear oral arguments and receive written  
3 briefs.

4       Sec. 105. In review of agency proceedings conducted under  
5 article 4, if timely application is made to the court for leave  
6 to present additional evidence and it is shown to the satisfac-  
7 tion of the court that an inadequate record was made at the hear-  
8 ing before the agency or that the additional evidence is material  
9 and that there were good reasons for failing to record or present  
10 it in the proceeding before the agency, the court shall order the  
11 taking of additional evidence before the agency on any conditions  
12 the court considers proper. The agency may modify its findings,  
13 decision, or order because of the additional evidence and shall  
14 file with the court the additional evidence and any new findings,  
15 decision, or order, which shall become part of the record.

16       Sec. 106. (1) Except when a statute or the constitution  
17 provides for a different scope of review, the court shall hold  
18 unlawful and set aside agency action if substantial rights of the  
19 petitioner have been prejudiced because the agency action is any  
20 of the following:

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

22       (b) In excess of the statutory authority or jurisdiction of  
23 the agency, or short of statutory right.

24       (c) Made upon unlawful procedure resulting in material prej-  
25 udice to a party.

26       (d) Arbitrary, capricious, or clearly an abuse or  
27 unwarranted exercise of discretion.

1 (e) Affected by other substantial and material error of  
2 law.

3 (f) In review of agency proceedings conducted under article  
4 4, not supported by competent, material, or substantial evidence  
5 on the whole record. The court shall apply the rules of evidence  
6 in the same manner as applied in the agency under section 75 and  
7 shall not overturn an agency decision solely because the prepon-  
8 derance of the evidence is not wholly constituted of evidence  
9 admissible under the Michigan rules of evidence.

10 (2) The court, as appropriate, may affirm, reverse, or  
11 modify the agency action or remand the case for further  
12 proceedings. The court shall authorize only actions that are  
13 included within the powers granted to the agency in the underly-  
14 ing statute or statutes on which the agency's decision was  
15 based.

16 ARTICLE 7

17 MISCELLANEOUS

18 Sec. 120. Articles 4, 5, and 6 do not apply to proceedings  
19 conducted under the worker's disability compensation act of 1969,  
20 Act No. 317 of the Public Acts of 1969, being sections 418.101 to  
21 418.941 of the Michigan Compiled Laws.

22 Sec. 121. If an agency has completed any or all of the pro-  
23 cessing of a rule pursuant to the administrative procedures act  
24 of 1969, Act No. 306 of the Public Acts of 1969, being sections  
25 24.201 to 24.328 of the Michigan Compiled Laws, before the effec-  
26 tive date of this act, similar processing required by this act  
27 need not be completed, and the balance of the processing and the

1 publication of the promulgated rule shall be completed pursuant  
2 to this act.

3       Sec. 122. A reference in any other law to former Act No. 88  
4 of the Public Acts of 1943, former Act No. 197 of the Public Acts  
5 of 1952, or the administrative procedures act of 1969, Act  
6 No. 306 of the Public Acts of 1969, being sections 24.201 to  
7 24.328 of the Michigan Compiled Laws, is considered to be a ref-  
8 erence to this act.

9       Sec. 123. Act No. 306 of the Public Acts of 1969, being  
10 sections 24.201 to 24.328 of the Michigan Compiled Laws, is  
11 repealed.

12       Sec. 124. This act shall take effect January 1, 1992 and,  
13 except as to proceedings then pending, applies to all agencies  
14 and agency proceedings not expressly exempted.