

Act No. 141  
Public Acts of 1993  
Approved by the Governor  
August 03, 1993  
Filed with the Secretary of State  
August 04, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Senator Dillingham

# **ENROLLED SENATE BILL No. 563**

AN ACT to amend sections 41, 42, 44, 45, and 46 of Act No. 306 of the Public Acts of 1969, entitled as amended "An act 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; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date," sections 41 and 42 as amended by Act No. 288 of the Public Acts of 1989 and section 45 as amended by Act No. 38 of the Public Acts of 1990, being sections 24.241, 24.242, 24.244, 24.245, and 24.246 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 41, 42, 44, 45, and 46 of Act No. 306 of the Public Acts of 1969, sections 41 and 42 as amended by Act No. 288 of the Public Acts of 1989 and section 45 as amended by Act No. 38 of the Public Acts of 1990, being sections 24.241, 24.242, 24.244, 24.245, and 24.246 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1).

(2) The notice described in subsection (1) shall include all of the following:

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

(b) The time and place of the public hearing and a statement of the manner in which data, views, questions, and arguments may be submitted by a person to the agency at other times.

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

(3) The agency shall transmit copies of the notice to each person who requested the agency in writing for advance notice of proposed action which may affect the person. The notice shall be by mail, in writing, to the last address specified by the person.

(4) The public hearing shall comply with any applicable statute, but is not subject to the provisions governing a contested case.

(5) The head of the promulgating agency or 1 or more persons designated by the head of the agency who have knowledge of the subject matter of the proposed rule shall be present at the public hearing and shall participate in the discussion of the proposed rule.

Sec. 42. (1) Except as provided in section 44, at a minimum, an agency shall publish the notice of public hearing as prescribed in any applicable statute, or if none, the agency shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula.

(2) Additional methods that may be employed by the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications.

(3) In addition to the requirements of subsection (1), the agency shall submit a copy of the notice to the legislative service bureau for publication in the Michigan register. An agency's notice shall be published in the Michigan register not less than 30 days and not more than 90 days before the public hearing.

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

(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590. However, notice of the proposed rule shall be published in the Michigan register at least 60 days before the submission of the rule to the secretary of state pursuant to section 46(4). A reasonable period, not to exceed 30 days, shall be provided for the submission of written comments and views following publication in the Michigan register.

(3) For purposes of subsection (2), "substantially similar" means identical, with the exception of style or format differences needed to conform to this or other state laws, as determined by the department of attorney general pursuant to section 45(1).

Sec. 45. (1) The legislative service bureau promptly shall approve a proposed rule if the legislative service bureau considers the proposed rule to be proper as to all matters of form, classification, arrangement, and numbering. The department of attorney general promptly shall approve a proposed rule if the department considers the proposed rule to be legal.

(2) Except as provided in subsection (13), after publication of the proposed rule in the Michigan register and after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall transmit by letter to the committee copies of the rule bearing certificates of approval from the legislative service bureau and the department of attorney general and copies of the rule without certificates. The agency transmittal shall be received by the committee within 2 years after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under subsection (11). The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the committee. The statement shall provide estimates of the impact of the proposed rules upon all of the following:

(a) The revenues, expenditures, and paper work requirements of the agency proposing the rule.

(b) The revenues and expenditures of any other state or local government agency affected by the proposed rule.

(c) The taxpayers, consumers, industry or trade groups, small business, or other applicable groups affected by the proposed rule.

(3) Except as provided in subsection (13) and section 40(4), if the regulatory impact statement discloses an impact on small businesses, the agency shall include with the letter of transmittal a small business economic impact statement in a form prescribed by the committee. A small business economic impact statement shall contain all of the following with respect to the proposed rules:

(a) The nature of any reports and the estimated cost of their preparation by small businesses that would be required to comply with the proposed rules.

(b) An analysis of the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

(c) The nature and estimated cost of any legal, consulting, and accounting services that small businesses would incur in complying with the proposed rules.

(d) A statement regarding whether the proposed rules will have a disproportionate impact on small businesses because of the size of those businesses.

(e) The ability of small businesses to absorb the costs estimated under subdivisions (a) to (c) without suffering economic harm and without adversely affecting competition in the marketplace.

(f) The cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

- (g) The impact on the public interest of exempting or setting lesser standards of compliance for small businesses.
- (h) A statement regarding the manner in which the agency reduced the economic impact of the rule on small businesses as required under section 40, or a statement regarding the reasons such a reduction was not feasible.
- (i) A statement regarding whether and how the agency has involved small businesses in the development of the rule.
- (4) In order to obtain cost information for purposes of subsection (3), an agency may survey a representative sample of affected small businesses or trade associations or may adopt any other means considered appropriate by the agency.
- (5) The agency shall transmit a copy of the small business economic impact statement to the director of commerce at the same time as required in subsection (3) for transmittal to the committee. The director of commerce shall review the statement and within 30 days after receipt shall notify the committee of any additional information pertinent to the committee's review.
- (6) After receipt by the committee of the agency's letter of transmittal, the committee has 2 months in which to consider the rule. If the committee by a majority vote determines that added time is needed to consider proposed rules, the committee may extend the time it has to consider a particular proposed rule by 1 month to a total of not longer than 3 months. This subsection, subsections (2) to (5), and subsections (7) to (12) do not apply to an emergency rule.
- (7) The committee shall furnish the senate fiscal agency and the house fiscal agency with a copy of each rule and regulatory impact statement filed with the committee, as well as a copy of the agenda identifying the proposed rules to be considered by the committee. The senate fiscal agency and the house fiscal agency shall analyze each proposed rule for possible fiscal implications which, if adopted, would result in additional appropriations in the current fiscal year or commit the legislature to an appropriation in a future fiscal year. The senate fiscal agency and the house fiscal agency shall report their findings in writing to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.
- (8) If the committee approves the proposed rule within the time period provided by subsection (6), the committee shall attach a certificate of its approval to all copies of the rule bearing certificates except 1 and transmit those copies to the agency.
- (9) If, within the time period provided by subsection (6), the committee disapproves the proposed rule or the committee chairperson certifies an impasse after votes for approval and disapproval have failed to receive concurrent majorities, the committee shall immediately report that fact to the legislature and return the rule to the agency. The agency shall not adopt or promulgate the rule unless 1 of the following occurs:
- (a) The legislature adopts a concurrent resolution approving the rule within 60 days after the committee report has been received by, and read into the respective journal of, each house.
- (b) The committee subsequently approves the rule.
- (10) If the time permitted by this section expires and the committee has not taken action under either subsection (8) or (9), then the committee shall return the proposed rules to the agency. The chairperson and alternate chairperson shall cause concurrent resolutions approving the rule to be introduced in both houses of the legislature simultaneously. Each house of the legislature shall place the concurrent resolution directly on its calendar. The agency shall not adopt or promulgate the rule unless 1 of the following occurs:
- (a) The legislature adopts a concurrent resolution approving the rule within 60 days after introduction by record roll call vote. The adoption of the concurrent resolution requires a majority of the members elected to and serving in each house of the legislature.
- (b) The agency resubmits the proposed rule to the committee and the committee approves the rule within the time permitted by this section.
- (11) An agency may withdraw a proposed rule by leave of the committee. An agency may resubmit a rule so withdrawn or returned under subsection (9) with changes following a committee meeting on the proposed rule or with minor modifications. A resubmitted rule is a new filing and subject to this section, but is not subject to further notice and hearing as provided in sections 41 and 42.
- (12) If the committee approves the proposed rule within the time period provided by subsection (6), or the legislature adopts a concurrent resolution approving the rule, the agency, if it wishes to proceed, shall formally adopt the rule pursuant to any applicable statute and make a written record of the adoption. Certificates of approval and adoption shall be attached to at least 6 copies of the rule.
- (13) Subsections (2) through (12) do not apply to a rule that is promulgated under the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, that is substantially similar to an existing federal standard that has been adopted or promulgated under the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590.

Sec. 46. (1) Except for a rule processed pursuant to section 44(2), to promulgate a rule an agency shall file in the office of the secretary of state 3 copies of the rule bearing the required certificates of approval and adoption and true copies of the rule without the certificates. An agency shall not file a rule, except an emergency rule under section 48,

until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule. An agency shall transmit a copy of the rule bearing the required certificates of approval and adoption to the office of the governor at least 10 days before it files the rule.

(2) The secretary of state shall endorse the date and hour of filing of rules on the 3 copies of the filing bearing the certificates and shall maintain a file containing 1 copy for public inspection.

(3) The secretary of state, as often as he or she considers it advisable, shall cause to be arranged and bound in a substantial manner the rules hereafter filed in his or her office with their attached certificates and published in a supplement to the Michigan administrative code. The secretary of state shall certify under his or her hand and seal of the state on the frontispiece of each volume that it contains all of the rules filed and published for a specified period. The rules, when so bound and certified, shall be kept in the office of the secretary of state and no further record of the rules is required to be kept. The bound rules are subject to public inspection.

(4) To promulgate a rule processed pursuant to section 44(2), an agency, after the period provided for written comments, shall file in the office of the secretary of state 3 copies of the rule along with the approval of the legislative service bureau and the department of attorney general.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved -----

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Governor.