

HOUSE BILL No. 5670

March 18, 2004, Introduced by Rep. Pappageorge.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 24, 41, 42, 45, 45a, 51, and 52 (MCL 24.224, 24.241, 24.242, 24.245, 24.245a, 24.251, and 24.252), sections 24, 41, 42, 45, 45a, and 52 as amended by 2004 PA 23.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 24. (1) Before the adoption of a guideline, an agency
2 shall give electronic notice of the proposed guideline to the
3 committee, the office of regulatory reform, and each person who
4 requested the agency in writing or electronically for advance
5 notice of proposed action that may affect the person. The
6 committee shall electronically provide the notice of the proposed
7 guideline not later than the next business day after receipt of
8 the notice from the agency to members of the committee and to
9 members of the standing committees of the senate and house of

1 representatives that deal with the subject matter of the proposed
2 guideline. The notice shall be given by mail, in writing, or
3 electronically transmitted to the last address specified by the
4 person requesting the agency for advanced notice of proposed
5 action that may affect that person. A request for notice is
6 renewable each December. ~~Only electronic~~ **Any** notice ~~shall be~~
7 ~~given~~ **under this section** to any member or agency of the
8 legislative and executive branches **shall be given**
9 **electronically.**

10 (2) The notice required by subsection (1) shall include all
11 of the following:

12 (a) A statement of the terms or substance of the proposed
13 guideline, a description of the subjects and issues involved, and
14 the proposed effective date of the guideline.

15 (b) A statement that the addressee may express any views or
16 arguments regarding the proposed guideline or the guideline's
17 effect on a person.

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

22 (d) A reference to the specific statutory provision about
23 which the proposed guideline states a policy.

24 Sec. 41. (1) Except as provided in section 44, before the
25 adoption of a rule, an agency, **or the office of regulatory**
26 **reform,** shall give notice of a public hearing and offer a person
27 an opportunity to present data, views, questions, and arguments.

1 The notice shall be given within the time prescribed by any
2 applicable statute, or if none, in the manner prescribed in
3 section 42(1).

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

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

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

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

14 (3) The agency, **or the office of regulatory reform acting on**
15 **behalf of an agency**, shall transmit copies of the notice to each
16 person who requested the agency in writing or electronically for
17 advance notice of proposed action that may affect the person. If
18 requested, the notice shall be by mail, in writing, or
19 electronically to the last address specified by the person.

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

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

1 Sec. 42. (1) Except as provided in section 44, at a
2 minimum, an agency, **or the office of regulatory reform acting on**
3 **behalf of the agency**, shall publish the notice of public hearing
4 as prescribed in any applicable statute or, if none, the agency,
5 **or the office of regulatory reform acting on behalf of the**
6 **agency**, shall publish the notice not less than 10 days and not
7 more than 60 days before the date of the public hearing in at
8 least 3 newspapers of general circulation in different parts of
9 the state, 1 of which shall be in the Upper Peninsula.

10 (2) Additional methods that may be employed by the agency, **or**
11 **the office of regulatory reform acting on behalf of the agency**,
12 depending upon the circumstances, include publication in trade,
13 industry, governmental, or professional publications or posting
14 on the ~~agency's~~ website **of the agency or the office of**
15 **regulatory reform**.

16 (3) In addition to the requirements of subsection (1), the
17 agency shall electronically submit a copy of the notice of public
18 hearing to the office of regulatory reform for publication in the
19 Michigan register. **If the office of regulatory reform submitted**
20 **the notice of public hearing on behalf of the agency, the office**
21 **of regulatory reform shall publish the notice of public hearing**
22 **in the Michigan register**. An agency's notice shall be published
23 in the Michigan register before the public hearing and the agency
24 shall electronically file a copy of the notice of public hearing
25 with the office of regulatory reform. Within 7 days after
26 receipt of the notice of public hearing, the office of regulatory
27 reform shall do all of the following before the public hearing:

1 (a) Electronically transmit a copy of the notice of public
2 hearing to the committee.

3 (b) Provide notice electronically through publicly accessible
4 internet media.

5 (4) After the office of regulatory reform electronically
6 transmits a copy of the notice of public hearing to the
7 committee, the committee shall electronically transmit copies of
8 the notice of public hearing, not later than the next business
9 day after receipt of the notice from the office of regulatory
10 reform, to each member of the committee and to the members of the
11 standing committees of the senate and house of representatives
12 that deal with the subject matter of the proposed rule.

13 (5) After receipt of the notice of public hearing filed under
14 subsection (3), the committee may meet to consider the proposed
15 rule, take testimony, and provide the agency with the committee's
16 informal response to the rule.

17 Sec. 45. (1) ~~The~~ **Except as otherwise provided for in this**
18 **subsection, the** agency shall submit the proposed rule to the
19 legislative service bureau for its formal certification. The
20 submission to the legislative service bureau for formal
21 certification shall be in the form of ~~4 paper copies and~~
22 electronic transmission. **If requested by the legislative service**
23 **bureau, the office of regulatory reform shall also transmit up to**
24 **4 paper copies of the proposed rule.** The legislative service
25 bureau shall promptly issue a certificate of approval indicating
26 a determination that a proposed rule is proper as to all matters
27 of form, classification, and arrangement. **If the legislative**

1 service bureau fails to issue a certificate of approval within 21
2 calendar days after receipt of the submission for formal
3 certification, the office of regulatory reform may issue a
4 certificate of approval. If the submission to the legislative
5 service bureau is returned by the legislative service bureau to
6 the agency before the expiration of the 21-calendar-day time
7 period, the 21-calendar-day time period is tolled until the rule
8 is resubmitted by the agency. The remainder of the
9 21-calendar-day time period or 6 calendar days, whichever is
10 longer, shall be available for consideration by the legislative
11 service bureau for formal certification of the rule. The office
12 of regulatory reform may approve a proposed rule if it considers
13 the proposed rule to be legal.

14 (2) Except as provided in subsection (6), after notice is
15 given as provided in this act and before the agency proposing the
16 rule has formally adopted the rule, the agency shall prepare an
17 agency report containing a synopsis of the comments contained in
18 the public hearing record and **a copy of the regulatory impact**
19 **statement required under subsection (3). In the report, the**
20 **agency** shall describe any changes in the proposed rules that were
21 made by the agency after the public hearing. The office of
22 regulatory reform shall transmit by ~~letter~~ **notice of**
23 **transmittal** to the committee copies of the rule, the agency
24 reports, **a copy of the regulatory impact statement**, and
25 certificates of approval from the legislative service bureau and
26 the office of regulatory reform. The office of regulatory reform
27 shall also electronically submit a copy of the rule, **any** agency

1 reports **required under this subsection, any regulatory impact**
2 **statements required under subsection (3), and any** certificates of
3 approval **required under subsection (1)** to the committee. The
4 agency shall electronically transmit to the committee the records
5 described in this subsection within 1 year after the date of the
6 last public hearing on the proposed rule unless the proposed rule
7 is a resubmission under section 45a(7).

8 (3) Except for a rule promulgated under sections 33, 44, and
9 48, the agency shall prepare and include with the notice of
10 transmittal a regulatory impact statement containing all of the
11 following information:

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

15 (b) An identification of the behavior and frequency of
16 behavior that the rule is designed to alter.

17 (c) An identification of the harm resulting from the behavior
18 that the rule is designed to alter and the likelihood that the
19 harm will occur in the absence of the rule.

20 (d) An estimate of the change in the frequency of the
21 targeted behavior expected from the rule.

22 (e) An identification of the businesses, groups, or
23 individuals who will be directly affected by, bear the cost of,
24 or directly benefit from the rule.

25 (f) An identification of any reasonable alternatives to
26 regulation pursuant to the proposed rule that would achieve the
27 same or similar goals.

1 (g) A discussion of the feasibility of establishing a
2 regulatory program similar to that proposed in the rule that
3 would operate through market-based mechanisms.

4 (h) An estimate of the cost of rule imposition on the agency
5 promulgating the rule.

6 (i) An estimate of the actual statewide compliance costs of
7 the proposed rule on individuals.

8 (j) An estimate of the actual statewide compliance costs of
9 the proposed rule on businesses and other groups.

10 (k) An identification of any disproportionate impact the
11 proposed rule may have on small businesses because of their
12 size.

13 (l) An identification of the nature of any report and the
14 estimated cost of its preparation by small business required to
15 comply with the proposed rule.

16 (m) An analysis of the costs of compliance for all small
17 businesses affected by the proposed rule, including costs of
18 equipment, supplies, labor, and increased administrative costs.

19 (n) An identification of the nature and estimated cost of any
20 legal consulting and accounting services that small businesses
21 would incur in complying with the proposed rule.

22 (o) An estimate of the ability of small businesses to absorb
23 the costs estimated under subdivisions (l) through (n) without
24 suffering economic harm and without adversely affecting
25 competition in the marketplace.

26 (p) An estimate of the cost, if any, to the agency of
27 administering or enforcing a rule that exempts or sets lesser

1 standards for compliance by small businesses.

2 (q) An identification of the impact on the public interest of
3 exempting or setting lesser standards of compliance for small
4 businesses.

5 (r) A statement describing the manner in which the agency
6 reduced the economic impact of the rule on small businesses or a
7 statement describing the reasons such a reduction was not
8 feasible.

9 (s) A statement describing whether and how the agency has
10 involved small businesses in the development of the rule.

11 (t) An estimate of the primary and direct benefits of the
12 rule.

13 (u) An estimate of any cost reductions to businesses,
14 individuals, groups of individuals, or governmental units as a
15 result of the rule.

16 (v) An estimate of any increase in revenues to state or local
17 governmental units as a result of the rule.

18 (w) An estimate of any secondary or indirect benefits of the
19 rule.

20 (x) An identification of the sources the agency relied upon
21 in compiling the regulatory impact statement.

22 (y) Any other information required by the office of
23 regulatory reform.

24 (4) The agency shall electronically transmit the regulatory
25 impact statement required under subsection (3) to the office of
26 regulatory reform at least 28 days before the public hearing
27 required pursuant to section 42. Before the public hearing can

1 be held, the regulatory impact statement must be **reviewed and**
2 approved by the office of regulatory reform. The agency shall
3 also electronically transmit a copy of the regulatory impact
4 statement to the committee before the public hearing and the
5 agency shall make copies available to the public at the public
6 hearing.

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

20 (6) Subsections (2), (3), and (4) do not apply to a rule that
21 is promulgated under sections 33, 44, and 48.

22 Sec. 45a. (1) Except as otherwise provided for in
23 subsections (7) and (8), after receipt by the committee of the
24 notice of transmittal specified in section 45(2), the committee
25 has ~~21 calendar~~ **15 session** days in which to consider the rule
26 and to object to the rule by filing a notice of objection
27 approved by a concurrent majority of the committee members **or the**

1 **committee may, by concurrent majority, waive the remaining**
2 **session days. If the committee waives the remaining session**
3 **days, the clerk of the committee shall promptly notify the office**
4 **of regulatory reform of the waiver by electronic transmission. A**
5 notice of objection may only be approved by the committee if the
6 committee affirmatively determines by a concurrent majority that
7 1 or more of the following conditions exist:

8 (a) The agency lacks statutory authority for the rule.

9 (b) The agency is exceeding the statutory scope of its
10 rule-making authority.

11 (c) There exists an emergency relating to the public health,
12 safety, and welfare that would warrant disapproval of the rule.

13 (d) The rule is in conflict with state law.

14 (e) A substantial change in circumstances has occurred since
15 enactment of the law upon which the proposed rule is based.

16 (f) The rule is arbitrary or capricious.

17 (g) The rule is unduly burdensome to the public or to a
18 licensee licensed by the rule.

19 (2) If the committee does not file a notice of objection
20 within the time period prescribed in subsection (1) **or if the**
21 **committee waives the remaining session days by concurrent**
22 **majority**, the office of regulatory reform may immediately file
23 the rule, with the ~~certificates~~ **certificate** of approval
24 **required under section 45(1)**, with the secretary of state. The
25 rule shall take effect ~~7 days after the date of~~ **immediately**
26 **upon** its filing unless a later date is indicated within the
27 rule.

1 (3) If the committee files a notice of objection within the
2 time period prescribed in subsection (1), the committee chair,
3 the alternate chair, or any member of the committee shall cause
4 bills to be introduced in both houses of the legislature
5 simultaneously. Each house shall place the bill or bills
6 directly on its calendar. The bills shall contain 1 or more of
7 the following:

8 (a) A rescission of a rule upon its effective date.

9 (b) A repeal of the statutory provision under which the rule
10 was authorized.

11 (c) A bill staying the effective date of the proposed rule
12 for up to 1 year.

13 (4) The notice of objection filed under subsection (3) stays
14 the ability of the office of regulatory reform to file the rule
15 with the secretary of state ~~for~~ **until the earlier of** the
16 following: ~~time periods:~~

17 (a) ~~Except as provided in subdivision (b) or (c), 21~~
18 ~~consecutive calendar~~ **Fifteen session days after the notice of**
19 **objection is filed under subsection (3).**

20 (b) ~~If both houses of the legislature are not in session for~~
21 ~~more than 14 consecutive calendar days but 21 or less consecutive~~
22 ~~calendar days following the filing of a notice of objection, the~~
23 ~~21 day time period described in subdivision (a) shall toll, with~~
24 ~~the remainder of the 21 day time period available for~~
25 ~~consideration upon the return of both houses. In no case under~~
26 ~~this subdivision shall the combined time period for consideration~~
27 ~~by the committee and full legislature exceed 63 consecutive~~

1 ~~calendar days.~~ The date of the rescission of the issuance of the
2 notice of objection, approved by a concurrent majority of the
3 committee members. The committee may meet to rescind the
4 issuance of the notice of objection under this subdivision. If
5 the committee rescinds the issuance of a notice of objection
6 under this subdivision, the clerk of the committee shall promptly
7 notify the office of regulatory reform by electronic transmission
8 of the rescission.

9 ~~(c) If both houses of the legislature are not in session~~
10 ~~more than 21 consecutive calendar days following the filing of a~~
11 ~~timely notice of objection, the 21-day time period described in~~
12 ~~subdivision (a) shall toll, with the remainder of the 21-day time~~
13 ~~period available for consideration upon the return of both~~
14 ~~houses.~~

15 (5) If the legislation introduced pursuant to subsection (3)
16 is defeated in either house and if the vote by which the
17 legislation failed to pass is not reconsidered in compliance with
18 the rules of that house, or if legislation introduced pursuant to
19 subsection (3) is not adopted by both houses within the time
20 period specified in subsection (4), the office of regulatory
21 reform may file the rule with the secretary of state. ~~Upon~~
22 ~~filing with the secretary of state, the~~ **The** rule shall take
23 effect ~~7 days after the~~ **immediately upon** filing ~~date~~ **with the**
24 **secretary of state** unless a later date is specified within the
25 rule.

26 (6) If the legislation introduced pursuant to subsection (3)
27 is enacted by the legislature and presented to the governor

1 within the ~~21-day~~ **15-session-day** period, the rules do not
2 become effective unless the legislation is vetoed by the governor
3 as provided by law. If the governor vetoes the legislation, the
4 office of regulatory reform may file the rules immediately. The
5 rule shall take effect 7 days after the date of its filing unless
6 a later effective date is indicated within the rule.

7 (7) An agency may withdraw a proposed rule under the
8 following conditions:

9 (a) With permission of the committee chair and alternate
10 chair, the agency may withdraw the rule and resubmit it. If
11 permission to withdraw is granted, the ~~21-day~~ **15-session-day**
12 time period described in subsection (1) is tolled until the rule
13 is resubmitted, except that the committee shall have at least ~~7~~
14 ~~calendar~~ **6 session** days after resubmission to consider the
15 resubmitted rule. ~~The period of time between withdrawal and~~
16 ~~resubmission of the rule is not counted toward the 63-day limit~~
17 ~~for rule consideration described in subsection (4)(b).~~

18 (b) Without permission of the committee chair and alternate
19 chair, the agency may withdraw the rule and resubmit it. If
20 permission to withdraw is not granted, a new and untolled
21 ~~21-day~~ **15-session-day** time period described in subsection (1)
22 shall begin upon resubmission of the rule to the committee for
23 consideration.

24 (8) Subsections (1) through (5) do not apply to rules adopted
25 under sections 33, 44, and 48.

26 (9) **As used in this section only, "session day" means each**
27 **day in which both the house of representatives and the senate**

1 convene in session.

2 Sec. 51. If the ~~joint~~ committee, ~~on administrative~~
3 ~~rules,~~ an appropriate standing committee, or a member of the
4 legislature believes that a promulgated rule or any part thereof
5 is unauthorized, is not within legislative intent, or is
6 inexpedient, the committee or member may ~~do either or both of~~
7 ~~the following:~~

8 ~~—— (a) Introduce a concurrent resolution at a regular or special~~
9 ~~session of the legislature expressing the determination of the~~
10 ~~legislature that the rule should be amended or rescinded.~~
11 ~~Adoption of the concurrent resolution constitutes legislative~~
12 ~~disapproval of the rule, but rejection of the resolution does not~~
13 ~~constitute legislative approval of the rule.~~

14 ~~—— (b) Introduce~~ **introduce** a bill at a regular session, or
15 special session if included in a governor's message, which in
16 effect amends or rescinds the rule.

17 Sec. 52. (1) If authorized by concurrent resolution of the
18 legislature, the committee, acting between regular sessions, may
19 suspend a rule or a part of a rule promulgated during the interim
20 between regular sessions.

21 (2) The committee shall electronically notify the agency
22 promulgating the rule, the secretary of state, ~~the department of~~
23 ~~management and budget,~~ and the office of regulatory reform of
24 any rule or part of a rule the committee suspends. A rule or
25 part of a rule suspended under this section shall not be
26 published in the Michigan register or in the Michigan
27 administrative code while suspended.

House Bill No. 5670 as amended December 7, 2004

1 (3) A rule suspended by the committee continues to be
2 suspended not longer than the end of the next regular legislative
3 session.

<<Enacting section 1. This amendatory act takes effect January 12, 2005.

Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005.>>