

HOUSE BILL No. 5850

March 9, 2006, Introduced by Reps. Baxter, Amos, Mortimer, Marleau and Sheltroun and referred to the Committee on Commerce.

A bill to amend 1969 PA 306, entitled
"Administrative procedures act of 1969,"
by amending sections 7a, 40, 43, 45, 61, and 64 (MCL 24.207a,
24.240, 24.243, 24.245, 24.261, and 24.264), sections 7a and 40 as
amended by 1999 PA 262, section 43 as amended by 1989 PA 288,
section 45 as amended by 2004 PA 491, and section 61 as amended by
1982 PA 413.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7a. "Small business" means a business concern
- 2 incorporated or doing business in this state, including the
- 3 affiliates of the business concern, which is independently owned
- 4 and operated and which employs fewer than ~~250~~ **500** full-time
- 5 employees or which has gross annual sales of less than

1 \$6,000,000.00.

2 Sec. 40. (1) When an agency proposes to adopt a rule that will
3 apply to a small business and the rule will have a disproportionate
4 impact on small businesses because of the size of those businesses,
5 the agency proposing to adopt the rule shall reduce the economic
6 impact of the rule on small businesses by doing 1 or more of the
7 following when it is lawful and feasible in meeting the objectives
8 of the act ~~authorizing the promulgation of the rule~~ **DELEGATING**
9 **RULE-MAKING AUTHORITY:**

10 (a) Establish differing compliance or reporting requirements
11 or timetables for small businesses under the rule.

12 (b) Consolidate or simplify the compliance and reporting
13 requirements for small businesses under the rule.

14 (c) Establish performance rather than design standards, when
15 appropriate.

16 (d) Exempt small businesses from any or all of the
17 requirements of the rule.

18 **(2) THE FACTORS DESCRIBED IN SUBSECTION (1)(A) THROUGH (D)**
19 **SHALL BE SPECIFICALLY ADDRESSED IN THE REGULATORY IMPACT STATEMENT**
20 **REQUIRED TO BE FILED BY THE AGENCY UNDER SECTION 45(3).**

21 **(3) —(2)—** If appropriate in reducing the disproportionate
22 economic impact on small business of a rule as provided in
23 subsection (1), an agency may use the following classifications of
24 small business:

25 (a) 0-9 full-time employees.

26 (b) 10-49 full-time employees.

27 (c) 50-249 full-time employees.

1 **(D) 250-500 FULL-TIME EMPLOYEES.**

2 **(4)** ~~—(3)—~~ For purposes of subsection ~~—(2)—~~ **(3)**, an agency may
 3 include a small business with a greater number of full-time
 4 employees in a classification that applies to a business with fewer
 5 full-time employees.

6 **(5)** ~~—(4)—~~ This section and section 45(3) do not apply to a
 7 rule which is required by federal law and which an agency
 8 promulgates without imposing standards more stringent than those
 9 required by the federal law.

10 Sec. 43. (1) Except in the case of an emergency rule
 11 promulgated in the manner described in section 48, a rule is not
 12 valid unless processed in compliance with ~~—section—~~ **SECTIONS 40(1),**
 13 **42, AND 45(3)** and unless in substantial compliance with section
 14 41(2), (3), (4), and (5).

15 (2) A proceeding to contest a rule on the ground of
 16 noncompliance with the requirements of sections **40, 41, —and— 42,**
 17 **AND 45** shall be commenced within 2 years after the effective date
 18 of the rule.

19 Sec. 45. (1) Except as otherwise provided for in this
 20 subsection, the agency shall submit the proposed rule to the
 21 legislative service bureau for its formal certification. The
 22 submission to the legislative service bureau for formal
 23 certification shall be in the form of electronic transmission. If
 24 requested by the legislative service bureau, the **STATE** office of
 25 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also
 26 transmit up to 4 paper copies of the proposed rule. The legislative
 27 service bureau shall promptly issue a certificate of approval

1 indicating a determination that a proposed rule is proper as to all
2 matters of form, classification, and arrangement. If the
3 legislative service bureau fails to issue a certificate of approval
4 within 21 calendar days after receipt of the submission for formal
5 certification, the **STATE** office of ~~regulatory reform~~
6 **ADMINISTRATIVE HEARINGS AND RULES** may issue a certificate of
7 approval. If the submission to the legislative service bureau is
8 returned by the legislative service bureau to the agency before the
9 expiration of the 21-calendar-day time period, the 21-calendar-day
10 time period is tolled until the rule is resubmitted by the agency.
11 The remainder of the 21-calendar-day time period or 6 calendar
12 days, whichever is longer, shall be available for consideration by
13 the legislative service bureau for formal certification of the
14 rule. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
15 **HEARINGS AND RULES** may approve a proposed rule if it considers the
16 proposed rule to be legal.

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

1 certificates of approval from the legislative service bureau and
2 the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND**
3 **RULES**. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
4 **HEARINGS AND RULES** shall also electronically submit a copy of the
5 rule, any agency reports required under this subsection, any
6 regulatory impact statements required under subsection (3), and any
7 certificates of approval required under subsection (1) to the
8 committee. The agency shall electronically transmit to the
9 committee the records described in this subsection within 1 year
10 after the date of the last public hearing on the proposed rule
11 unless the proposed rule is a resubmission under section 45a(7).

12 (3) Except for a rule promulgated under sections 33, 44, and
13 48, the agency shall prepare and include with the notice of
14 transmittal a regulatory impact statement containing all of the
15 following information:

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

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

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

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

26 (e) An identification of the businesses, groups, or
27 individuals who will be directly affected by, bear the cost of, or

1 directly benefit from the rule.

2 (f) An identification of any reasonable alternatives to
3 regulation pursuant to the proposed rule that would achieve the
4 same or similar goals.

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

8 (h) An estimate of the cost of rule imposition on the agency
9 promulgating the rule.

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

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

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

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

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

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

25 (o) An estimate of the ability of small businesses to absorb
26 the costs estimated under subdivisions (l) through (n) without
27 suffering economic harm and without adversely affecting competition

1 in the marketplace.

2 (p) An estimate of the cost, if any, to the agency of
3 administering or enforcing a rule that exempts or sets lesser
4 standards for compliance by small businesses.

5 (q) An identification of the impact on the public interest of
6 exempting or setting lesser standards of compliance for small
7 businesses.

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

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

13 (t) An estimate of the primary and direct benefits of the
14 rule.

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

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

20 (w) An estimate of any secondary or indirect benefits of the
21 rule.

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

24 **(Y) A DETAILED RECITATION OF THE EFFORTS OF THE AGENCY TO**
25 **COMPLY WITH THE MANDATE TO REDUCE THE DISPROPORTIONATE IMPACT OF**
26 **THE RULE UPON SMALL BUSINESSES AS DESCRIBED IN SECTION 40(1)(A)**
27 **THROUGH (D).**

1 **(Z)** ~~—(y)—~~ Any other information required by the **STATE** office
2 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**.

3 (4) The agency shall electronically transmit the regulatory
4 impact statement required under subsection (3) to the **STATE** office
5 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** at least
6 28 days before the public hearing required pursuant to section 42.
7 Before the public hearing can be held, the regulatory impact
8 statement must be reviewed and approved by the **STATE** office of
9 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**. The agency
10 shall also electronically transmit a copy of the regulatory impact
11 statement to the committee before the public hearing and the agency
12 shall make copies available to the public at the public hearing **AND**
13 **PUBLISH IT ON ITS WEBSITE AT LEAST 10 DAYS BEFORE THE DATE OF THE**
14 **PUBLIC HEARING**.

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

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

3 Sec. 61. (1) The filing of a rule under this act raises a
4 rebuttable presumption that the rule was adopted, filed with the
5 secretary of state, and made available for public inspection as
6 required by this act.

7 (2) The publication of a rule in the Michigan register, the
8 Michigan administrative code, or in an annual supplement to the
9 code raises a rebuttable presumption that **THE FOLLOWING OCCURRED:**

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

12 (b) The rule printed in the publication is a true and correct
13 copy of the promulgated rule.

14 ~~(c) All requirements of this act relative to the rule have~~
15 ~~been complied with.~~

16 (3) The courts shall take judicial notice of a rule which
17 becomes effective under this act.

18 Sec. 64. Unless an exclusive procedure or remedy is provided
19 by a statute governing the agency, the validity or applicability of
20 a rule, **INCLUDING THE FAILURE OF AN AGENCY TO ASSESS THE IMPACT OF**
21 **THE RULE ON SMALL BUSINESSES IN ITS REGULATORY IMPACT STATEMENT,**
22 may be determined in an action for declaratory judgment when the
23 court finds that the rule or its threatened application interferes
24 with or impairs, or imminently threatens to interfere with or
25 impair, the legal rights or privileges of the plaintiff. The action
26 shall be filed in the circuit court of the county where the
27 plaintiff resides or has his principal place of business in this

1 state or in the circuit court for Ingham county. The agency shall
2 be made a party to the action. ~~An action for declaratory judgment~~
3 ~~may not be commenced under this section unless the plaintiff has~~
4 ~~first requested the agency for a declaratory ruling and the agency~~
5 ~~has denied the request or failed to act upon it expeditiously.~~
6 This section shall not be construed to prohibit the determination
7 of the validity or applicability of the rule in any other action or
8 proceeding in which its invalidity or inapplicability is asserted.