HOUSE BILL NO. 4386

March 19, 2019, Introduced by Reps. Pohutsky, Sowerby, Bolden, Brixie, Stone, Koleszar, Rabhi, Pagan, Hood, Ellison, Sneller, Cherry, Hope, Love, Cambensy, Yancey, Kennedy, Sabo, LaGrand, Lasinski, Camilleri, Warren, Manoogian, Hoadley, Kuppa, Wittenberg, Robinson, Haadsma, Elder, Hertel, Clemente and Coleman and referred to the Committee on Oversight.

A bill to amend 1969 PA 306, entitled

"Administrative procedures act of 1969,"

by amending sections 32 and 45 (MCL 24.232 and 24.245), as amended by 2018 PA 602.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 32. (1) Definitions of words and phrases and rules of construction prescribed in any statute that are made applicable to all statutes of this state also apply to rules unless clearly indicated to the contrary.

(2) A rule or exception to a rule must not discriminate in favor of or against any person. A person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

(3) The violation of a rule is a crime if provided by statute. Unless provided by statute, a rule must not designate an act or omission as a crime or prescribe a criminal penalty for violation of a rule.

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

(5) A guideline, operational memorandum, bulletin, interpretive statement, or form with instructions is not enforceable by an agency, is considered merely advisory, and must not be given the force and effect of law. An agency shall not rely upon a guideline, operational memorandum, bulletin, interpretive

statement, or form with instructions to support the agency's decision to act or refuse to act if that decision is subject to judicial review. A court shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to uphold an agency decision to act or refuse to act.

(6) If a statute provides that an agency may proceed by rule-making or by order and an agency proceeds by order in lieu of rule-making, the agency shall not give the order general applicability to persons who were not parties to the proceeding or contested case before the issuance of the order, unless the order was issued after public notice and a public hearing.

(7) A rule must not exceed the rule-making delegation contained in the statute authorizing the rule-making.

~~(8) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.~~

~~(9) Except for an emergency rule promulgated under section 48, and subject to subsection (10), if the federal government has not mandated that this state promulgate rules, an agency shall not adopt or promulgate a rule more stringent than an applicable federal standard unless specifically authorized by a statute of this state or unless the director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard.~~

~~(10) Subsections (8) and (9) do not apply to the amendment of the special education programs and services rules, R 340.1701 to R 340.1862 of the Michigan Administrative Code. However, subsections (8) and (9) do apply to the promulgation of new rules relating to special education with the rescission of R 340.1701 to R 340.1862 of the Michigan Administrative Code.~~

Sec. 45. (1) Except as otherwise provided in this subsection, an agency shall electronically submit a proposed rule to the legislative service bureau for its formal certification. If requested by the legislative service bureau, the office shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement. If the legislative service bureau fails to issue a certificate of approval within 21 calendar days after receipt of the submission for formal certification, the office may issue a certificate of approval. If the legislative service bureau returns the submission to the agency before the expiration of the 21-calendar-day time period, the 21-calendar-day time period is tolled until the rule is resubmitted by the agency. After resubmission, the legislative service bureau has the remainder of the 21-calendar-day time period or 6 calendar days, whichever is longer, to consider the formal certification of the rule. The office may approve a proposed rule if it considers the proposed rule to be legal and appropriate.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a synopsis of the comments contained in

the public hearing record, a copy of the request for rule-making, and the regulatory impact statement required under subsection (3). In the report, the agency shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office shall transmit by notice of transmittal to the committee copies of the rule, the agency reports containing the request for rule-making, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office. The office shall also electronically submit to the committee a copy of the rule, any agency reports required under this subsection, any regulatory impact statements required under subsection (3), and any certificates of approval required under subsection (1). The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule.

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

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

~~(b) If section 32(8) applies and the proposed rule is more stringent than the applicable federally mandated standard, a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitate the more~~

~~stringent standard.~~

~~(c) If section 32(9) applies and the proposed rule is more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rule or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rule and an explanation of the exceptional circumstances that necessitate the more stringent standard.~~

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

(c) ~~(e)~~ An identification of the behavior and frequency of behavior that the rule is designed to alter.

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

(e) ~~(g)~~ An estimate of the change in the frequency of the targeted behavior expected from the rule.

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

(g) ~~(i)~~ An identification of any reasonable alternatives to regulation under the proposed rule that would achieve the same or similar goals.

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

(i) ~~(k)~~ An estimate of the cost of rule imposition on the agency promulgating the rule.

(j) ~~(*l*)~~ An estimate of the actual statewide compliance costs of the proposed rule on individuals.

(k) ~~(m)~~ A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.

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

(m) ~~(o)~~ An identification of any disproportionate impact the proposed rule may have on small businesses because of their size.

(n) ~~(p)~~ An identification of the nature of any report required and the estimated cost of its preparation by small businesses required to comply with the proposed rule.

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

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

(q) ~~(s)~~ An estimate of the ability of small businesses to absorb the costs estimated under subdivisions **(n) to** (p) ~~to (r)~~ without suffering economic harm and without adversely affecting competition in the marketplace.

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

(s) ~~(u)~~ An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

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

(u) ~~(w)~~ A statement describing how the agency has involved small businesses in the development of the rule.

(v) ~~(x)~~ An estimate of the primary and direct benefits of the rule.

(w) ~~(y)~~ An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.

(x) ~~(z)~~ An estimate of any increase in revenues to state or local governmental units as a result of the rule.

(y) ~~(aa)~~ An estimate of any secondary or indirect benefits of the rule.

(z) ~~(bb)~~ An identification of the sources the agency relied on in compiling the regulatory impact statement, including the methodology used in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.

(aa) ~~(cc)~~ A detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule on small businesses as described in section 40(1)(a) to (d).

(bb) ~~(dd)~~ Any other information required by the office.

(4) An agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office at least 28 days before the public hearing required under section 41. The agency shall not hold the public hearing until the regulatory impact statement has been reviewed and approved by the office. The

agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the regulatory impact statement on its website at least 10 days before the date of the public hearing.

(5) The committee shall electronically transmit to the senate fiscal agency and the house fiscal agency a copy of each rule and regulatory impact statement filed with the committee and 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 that, if the rule were 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 electronically report their findings to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.

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