

HOUSE BILL No. 5007

July 3, 1997, Introduced by Reps. Curtis and Wetters and referred to the Committee on Judiciary.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 5, 7a, 8, 40, 42, 44, 48, and 122 (MCL 24.205, 24.207a, 24.208, 24.240, 24.242, 24.244, 24.248, and 24.322), section 5 as amended by 1982 PA 413, sections 7a and 40 as added by 1984 PA 273, section 8 as amended by 1988 PA 333, sections 42 and 44 as amended by 1993 PA 141, section 48 as amended by 1986 PA 292, and section 122 as added by 1984 PA 196, and by adding sections 45a and 46a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) "LEGISLATIVE DAY" MEANS ANY DAY IN WHICH EITHER
2 OR BOTH HOUSES OF THE LEGISLATURE ARE IN SESSION.

3 (2) ~~—(1)—~~ "License" includes the whole or part of an agency
4 permit, certificate, approval, registration, charter, or similar

1 form of permission required by law, but does not include a
2 license required solely for revenue purposes, or a license or
3 registration issued under ~~Act No. 300 of the Public Acts of~~
4 ~~1949, as amended, being sections 257.1 to 257.923 of the Michigan~~
5 ~~Compiled Laws~~ THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1
6 TO 257.923.

7 (3) ~~-(2)-~~ "Licensing" includes agency activity involving the
8 grant, denial, renewal, suspension, revocation, annulment, with-
9 drawal, recall, cancellation, or amendment of a license.

10 (4) ~~-(3)-~~ "Michigan register" means the publication
11 described in section 8.

12 (5) "NOTICE OF OBJECTION" MEANS THE DOCUMENT PREPARED BY THE
13 COMMITTEE FOR FILING WITH THE SECRETARY OF STATE THAT INDICATES
14 THE COMMITTEE'S FORMAL OBJECTION TO A PROPOSED RULE.

15 (6) ~~-(4)-~~ "Party" means a person or agency named, admitted,
16 or properly seeking and entitled of right to be admitted, as a
17 party in a contested case.

18 (7) ~~-(5)-~~ "Person" means an individual, partnership, associ-
19 ation, corporation, governmental subdivision, or public or pri-
20 vate organization of any kind other than the agency engaged in
21 the particular processing of a rule, declaratory ruling, or con-
22 tested case.

23 (8) ~~-(6)-~~ "Processing of a rule" means the action required
24 or authorized by this act regarding a rule which is to be promul-
25 gated, including the rule's adoption, and ending with the rule's
26 promulgation.

1 (9) ~~-(7)-~~ "Promulgation of a rule" means that step in the
2 processing of a rule consisting of the filing of a rule with the
3 secretary of state.

4 Sec. 7a. (1) "Small business" means a business concern
5 incorporated or doing business in this state, including the
6 affiliates of the business concern, which is independently owned
7 and operated and which employs fewer than 250 full-time employees
8 or which has gross annual sales of less than \$6,000,000.00.

9 (2) ~~"Small business economic impact statement" means a~~
10 ~~statement prepared by a state agency which meets the requirements~~
11 ~~of section 45(3).~~ "TRANSMITTAL DATE" MEANS THE DATE A PROPOSED
12 RULE IS TRANSMITTED BY AN AGENCY TO THE COMMITTEE IN THE MANNER
13 PROVIDED FOR IN SECTION 45A(2).

14 Sec. 8. (1) The legislative service bureau shall publish
15 the Michigan register each month. The Michigan register shall
16 contain all of the following:

17 (a) Executive orders and executive reorganization orders.

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

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

25 (d) Proposed administrative rules.

26 ~~-(e) Small business economic impact statements on proposed~~
27 ~~rules as required by section 45.~~

1 (E) ~~-(f)-~~ Notices of public hearings on proposed
2 administrative rules.

3 (F) ~~-(g)-~~ Administrative rules filed with the secretary of
4 state.

5 (G) ~~-(h)-~~ Emergency rules filed with the secretary of
6 state.

7 (H) ~~-(i)-~~ Notice of proposed and adopted agency guidelines.

8 (I) ~~-(j)-~~ Other official information considered necessary or
9 appropriate by the legislative service bureau.

10 (J) ~~-(k)-~~ Attorney general opinions.

11 (K) ~~-(l)-~~ All of the items listed in section 7(l) after
12 final approval by the certificate of need commission or the
13 statewide health coordinating council under section 22215 or
14 22217 of the public health code, ~~Act No. 368 of the Public Acts~~
15 ~~of 1978, being sections 333.22215 and 333.22217 of the Michigan~~
16 ~~Compiled Laws~~ 1978 PA 368, MCL 333.22215 AND 333.22217.

17 (2) The legislative service bureau shall publish a cumula-
18 tive index for the Michigan register.

19 (3) The Michigan register shall be available for public sub-
20 scription at a fee reasonably calculated to cover publication and
21 distribution costs.

22 (4) If publication of an agency's proposed rule, guideline,
23 or ~~small business economic impact statement or~~ an item
24 described in subsection ~~-(1)-(l)-~~ (1)(K) would be unreasonably
25 expensive or lengthy, the legislative service bureau may publish
26 a brief synopsis of the proposed rule, guideline, ~~small business~~
27 ~~impact statement,~~ or item described in subsection ~~-(1)-(l)-~~

1 (1)(K), including information on how to obtain a complete copy of
2 the proposed rule, guideline, ~~small business impact statement,~~
3 or item described in subsection ~~(1)(I)~~ (1)(K) from the agency
4 at no cost.

5 ~~(5) An agency shall transmit a copy of the small business~~
6 ~~economic impact statement, together with the applicable proposed~~
7 ~~rules and notice of public hearing, to the legislative service~~
8 ~~bureau for publication in the Michigan register.~~

9 Sec. 40. (1) When an agency proposes to adopt a rule which
10 will apply to a small business ~~,~~ and ~~the small business eco-~~
11 ~~nomic impact statement discloses that~~ the rule will have a dis-
12 proportionate impact on small businesses because of the size of
13 those businesses, the agency proposing to adopt the rule shall
14 reduce the economic impact of the rule on small businesses by
15 doing 1 or more of the following when it is lawful and feasible
16 in meeting the objectives of the act authorizing the promulgation
17 of the rule:

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

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

22 (c) Establish performance rather than design standards, when
23 appropriate.

24 (d) Exempt small businesses from any or all of the require-
25 ments of the rule.

26 (2) If appropriate in reducing the disproportionate economic
27 impact on small business of a rule as provided in subsection (1),

1 an agency may use the following classifications of small
2 business:

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

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

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

6 (3) For purposes of subsection (2), an agency may include a
7 small business with a greater number of full-time employees in a
8 classification that applies to a business with fewer full-time
9 employees.

10 (4) This section and section ~~45(3)~~ 45A(3)(E) AND (F) shall
11 not apply to a rule which is required by federal law and which an
12 agency promulgates without imposing standards more stringent than
13 those required by the federal law.

14 Sec. 42. (1) Except as provided in section 44, at a mini-
15 mum, an agency shall publish the notice of public hearing as pre-
16 scribed in any applicable statute, or if none, the agency shall
17 publish the notice not less than 10 days and not more than 60
18 days before the date of the public hearing in at least 3 newspa-
19 pers of general circulation in different parts of the state, 1 of
20 which shall be in the Upper Peninsula.

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

24 (3) In addition to the requirements of subsection (1), the
25 agency shall submit a copy of the notice OF PUBLIC HEARING to the
26 legislative service bureau for publication in the Michigan
27 register AND SHALL FILE A COPY OF THE NOTICE OF PUBLIC HEARING

1 WITH THE COMMITTEE. An agency's notice shall be published in the
2 Michigan register not less than 30 days and not more than 90 days
3 before the public hearing.

4 (4) UPON RECEIPT OF THE NOTICE OF PUBLIC HEARING FILED PUR-
5 SUANT TO SUBSECTION (3), AND BEFORE THE FORMAL TRANSMITTAL
6 DESCRIBED IN SECTION 45A, THE COMMITTEE MAY MEET TO CONSIDER THE
7 RULE, TAKE TESTIMONY, AND PROVIDE THE AGENCY WITH THE COMMITTEE'S
8 INFORMAL RESPONSE TO THE RULE.

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

16 (2) Sections 41 and 42 do not apply to a rule that is
17 promulgated under the Michigan occupational safety and health
18 act, ~~Act No. 154 of the Public Acts of 1974, being sections~~
19 ~~408.1001 to 408.1094 of the Michigan Compiled Laws~~ 1974 PA 154,
20 MCL 408.1001 TO 408.1094, that is substantially similar to an
21 existing federal standard that has been adopted or promulgated
22 under the occupational safety and health act of 1970, Public Law
23 91-596, 84 Stat. 1590. However, notice of the proposed rule
24 shall be published in the Michigan register at least 60 days
25 before the submission of the rule to the secretary of state pur-
26 suant to section ~~46(4)~~ 46A(4). A reasonable period, not to
27 exceed 30 days, shall be provided for the submission of written

1 comments and views following publication in the Michigan
2 register.

3 (3) For purposes of subsection (2), "substantially similar"
4 means identical, with the exception of style or format differ-
5 ences needed to conform to this or other state laws, as deter-
6 mined by the department of attorney general pursuant to section
7 ~~45(1)~~ 45A(1).

8 SEC. 45A. (1) THE LEGISLATIVE SERVICE BUREAU PROMPTLY SHALL
9 APPROVE A PROPOSED RULE IF THE LEGISLATIVE SERVICE BUREAU CONSID-
10 ERS THE PROPOSED RULE TO BE PROPER AS TO ALL MATTERS OF FORM,
11 CLASSIFICATION, ARRANGEMENT, AND NUMBERING. THE DEPARTMENT OF
12 ATTORNEY GENERAL PROMPTLY SHALL APPROVE A PROPOSED RULE IF IT
13 CONSIDERS THE PROPOSED RULE TO BE LEGAL.

14 (2) EXCEPT AS PROVIDED IN SUBSECTION (10), AFTER PUBLICATION
15 OF THE PROPOSED RULE IN THE MICHIGAN REGISTER, AFTER NOTICE IS
16 GIVEN AS PROVIDED IN THIS ACT, AND AFTER THE AGENCY PROPOSING THE
17 RULE HAS FORMALLY ADOPTED THE RULE, THE AGENCY SHALL TRANSMIT BY
18 LETTER TO THE COMMITTEE COPIES OF THE RULE, AGENCY REPORT, AND
19 CERTIFICATES OF APPROVAL FROM THE LEGISLATIVE SERVICE BUREAU AND
20 THE DEPARTMENT OF ATTORNEY GENERAL. THE NUMBER OF COPIES TRANS-
21 MITTED SHALL BE THE NUMBER REQUIRED IN THE COMMITTEE PROCEDURES
22 AND STANDARDS PUBLISHED PURSUANT TO SECTION 36 BUT SHALL NOT
23 EXCEED 35 COPIES. THE AGENCY REPORT SHALL PROVIDE THE INFORMA-
24 TION REQUIRED BY THE COMMITTEE PROCEDURES AND STANDARDS PUBLISHED
25 UNDER SECTION 36 AND SHALL DESCRIBE ANY CHANGES IN THE PROPOSED
26 RULE THAT WERE MADE BY THE AGENCY SUBSEQUENT TO THE PUBLIC
27 HEARING. THE AGENCY SHALL DELIVER THE TRANSMITTAL DOCUMENTS

1 DESCRIBED IN THIS SUBSECTION TO THE COMMITTEE NOT LATER THAN 1
2 YEAR AFTER THE DATE OF THE LAST PUBLIC HEARING ON THE PROPOSED
3 RULE UNLESS THE PROPOSED RULE IS A RESUBMISSION UNDER
4 SUBSECTION (9).

5 (3) THE AGENCY SHALL INCLUDE WITH THE TRANSMITTAL DOCUMENTS
6 DESCRIBED IN SUBSECTION (2) A REGULATORY IMPACT STATEMENT CON-
7 TAINING ALL OF THE FOLLOWING INFORMATION:

8 (A) A STATEMENT DESCRIBING THE STATUTORY AUTHORITY FOR THE
9 RULE INCLUDING, BUT NOT LIMITED TO, THE AGENCY'S INTERPRETATION
10 OF THE LEGISLATIVE OBJECTIVES OF THE GRANT OF AUTHORITY.

11 (B) A STATEMENT DESCRIBING THE PURPOSE OF, NECESSITY FOR,
12 AND THE BENEFIT TO BE DERIVED FROM THE RULE.

13 (C) A STATEMENT INDICATING WHETHER AND HOW THE AGENCY HAS
14 INVOLVED IN THE DEVELOPMENT OF THE RULE THOSE PERSONS AFFECTED BY
15 THE RULE.

16 (D) A STATEMENT DESCRIBING THE PROJECTED COST OF THE RULE,
17 TO INCLUDE ALL OF THE FOLLOWING:

18 (i) THE COST OF THE IMPLEMENTATION OF AND THE CONTINUING
19 COMPLIANCE WITH THE RULE TO THE REGULATED PERSONS.

20 (ii) THE COST OF THE IMPLEMENTATION OF AND THE CONTINUING
21 ADMINISTRATION OF THE RULE TO THE AGENCY AND TO LOCAL UNITS OF
22 GOVERNMENT.

23 (iii) THE SOURCE OF THE INFORMATION AND THE METHODOLOGY UPON
24 WHICH THE COST ANALYSES IN SUBPARAGRAPHS (i) AND (ii) IS BASED.
25 IF THE AGENCY IS NOT ABLE TO FULLY PROVIDE A STATEMENT OF COSTS,
26 IT SHALL PROVIDE A STATEMENT ESTIMATING THE COSTS ACCOMPANIED BY
27 THE INFORMATION AND METHODOLOGY UPON WHICH THE ESTIMATE IS BASED

1 AND THE REASONS FOR THE AGENCY'S INABILITY TO PROVIDE FOR A
2 COMPLETE COSTS ANALYSIS.

3 (E) A STATEMENT REGARDING WHETHER THE RULE WILL HAVE A DIS-
4 PROPORTIONATE EFFECT ON SMALL BUSINESSES AND, IF SO, THE EXTENT
5 OF THE IMPACT.

6 (F) A STATEMENT REGARDING THE MANNER IN WHICH THE AGENCY HAS
7 REDUCED THE ECONOMIC IMPACT OF THE RULE ON SMALL BUSINESSES AS
8 REQUIRED UNDER SECTION 40 OR A STATEMENT DESCRIBING THE REASON
9 SUCH A REDUCTION IS NOT FEASIBLE.

10 (G) A STATEMENT DESCRIBING THE IMPOSITION OF ANY PROGRAM,
11 SERVICE, DUTY, OR RESPONSIBILITY ON ANY LOCAL UNIT OF GOVERNMENT
12 OR LOCAL GOVERNMENTAL AUTHORITY OR DISTRICT.

13 (H) A STATEMENT DESCRIBING ANY REPORTING REQUIREMENTS,
14 INCLUDING FORMS AND OTHER DOCUMENTATION, AND THE NEED FOR SUCH
15 REPORTS.

16 (I) A STATEMENT IDENTIFYING ANY FEDERAL AND STATE RULES,
17 REGULATIONS, OR STATUTES RELEVANT TO THE SUBJECT MATTER OF THE
18 RULES AND ANY FEDERAL AND STATE RULES, REGULATIONS, AND STATUTES
19 WHICH MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE RULE. IN THE
20 CASE OF RULES, REGULATIONS, OR STATUTES THAT MAY DUPLICATE, OVER-
21 LAP, OR CONFLICT WITH THE RULE, THE AGENCY SHALL IDENTIFY THE
22 EFFORTS, IF ANY, THAT THE AGENCY HAS UNDERTAKEN OR PROPOSES TO
23 UNDERTAKE TO RESOLVE OR MINIMIZE THE IMPACT OF THE DUPLICATION,
24 OVERLAP, OR CONFLICT INCLUDING, BUT NOT LIMITED TO, OBTAINING OF
25 WAIVERS OR EXEMPTIONS FROM THOSE REQUIREMENTS, OBTAINING THE
26 AMENDMENT OF THOSE OTHER REQUIREMENTS, OR ENTERING INTO A

1 MEMORANDUM OF UNDERSTANDING OR OTHER AGREEMENT REGARDING THOSE
2 REQUIREMENTS.

3 (J) A STATEMENT INDICATING WHETHER ANY SIGNIFICANT ALTERNA-
4 TIVES TO THE RULE WERE CONSIDERED BY THE AGENCY, INCLUDING A
5 STATEMENT OF THE ALTERNATIVES CONSIDERED AND THE REASON THEY WERE
6 NOT UTILIZED OR NOT INCORPORATED INTO THE RULE.

7 (K) A STATEMENT IDENTIFYING WHETHER THE RULE EXCEEDS ANY
8 MINIMUM STANDARDS OF THE FEDERAL GOVERNMENT FOR THE SAME OR SIMI-
9 LAR SUBJECT MATTER AREAS AND, IF SO, AN EXPLANATION OF WHY THE
10 RULE EXCEEDS THOSE STANDARDS.

11 (L) A STATEMENT INDICATING THE ESTIMATED PERIOD OF TIME NEC-
12 ESSARY TO ENABLE THE REGULATED PERSONS TO ACHIEVE COMPLIANCE WITH
13 THE RULE.

14 (4) THE AGENCY SHALL PROVIDE THE SENATE FISCAL AGENCY AND
15 THE HOUSE FISCAL AGENCY WITH A COPY OF EACH RULE AND REGULATORY
16 IMPACT STATEMENT TRANSMITTED TO THE COMMITTEE ON THE SAME DAY THE
17 RULE IS TRANSMITTED TO THE COMMITTEE. THE SENATE FISCAL AGENCY
18 AND THE HOUSE FISCAL AGENCY SHALL ANALYZE EACH PROPOSED RULE FOR
19 POSSIBLE FISCAL IMPLICATIONS THAT, IF ADOPTED, WOULD RESULT IN
20 ADDITIONAL APPROPRIATIONS IN THE CURRENT FISCAL YEAR OR COMMIT
21 THE LEGISLATURE TO AN APPROPRIATION IN A FUTURE FISCAL YEAR. THE
22 SENATE FISCAL AGENCY AND THE HOUSE FISCAL AGENCY SHALL PROVIDE A
23 COPY OF THEIR ANALYSIS TO THE COMMITTEE WITHIN 28 CALENDAR DAYS
24 AFTER THE DATE OF RECEIVING THE PROPOSED RULE.

25 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8), THE COM-
26 MITTEE HAS 60 DAYS AFTER THE TRANSMITTAL DATE TO MEET, TAKE
27 TESTIMONY, AND CONSIDER THE RULE AND, IF APPROVED BY A CONCURRENT

1 MAJORITY OF THE COMMITTEE MEMBERS, OBJECT TO THE RULE BY FILING A
2 NOTICE OF OBJECTION.

3 (6) IF THE COMMITTEE DOES NOT FILE A NOTICE OF OBJECTION,
4 THE AGENCY MAY FILE THE RULE WITH THE SECRETARY OF STATE NOT LESS
5 THAN 60 DAYS AFTER THE TRANSMITTAL DATE OR NOT LESS THAN 90 DAYS
6 AFTER THE TRANSMITTAL DATE IF THE RULE IS TRANSMITTED DURING THE
7 TIME PERIOD DESCRIBED IN SUBSECTION (8). IN SUCH CASE, THE RULE
8 SHALL TAKE EFFECT 5 DAYS AFTER THE DATE OF FILING.

9 (7) IF THE COMMITTEE FILES A NOTICE OF OBJECTION, THE AGENCY
10 MAY FILE THE RULE WITH THE SECRETARY OF STATE NOT LESS THAN 60
11 DAYS AFTER THE TRANSMITTAL DATE OR NOT LESS THAN 90 DAYS AFTER
12 THE TRANSMITTAL DATE IF THE RULE IS TRANSMITTED DURING THE TIME
13 PERIOD DESCRIBED IN SUBSECTION (8). IN SUCH CASE, THE RULE SHALL
14 TAKE EFFECT 30 LEGISLATIVE DAYS AFTER THE DATE THE RULE IS FILED
15 WITH THE SECRETARY OF STATE.

16 (8) IF A RULE IS TRANSMITTED TO THE COMMITTEE WITHIN 60 DAYS
17 BEFORE SINE DIE ADJOURNMENT IN THE SECOND YEAR OF A LEGISLATIVE
18 SESSION, THE COMMITTEE SHALL HAVE 90 DAYS TO MEET, TAKE TESTIMO-
19 NY, AND CONSIDER THE RULE AND, IF APPROVED BY A CONCURRENT MAJOR-
20 ITY OF THE COMMITTEE MEMBERS, OBJECT TO THE RULE BY FILING A
21 NOTICE OF OBJECTION WITH THE SECRETARY OF STATE.

22 (9) AN AGENCY MAY WITHDRAW A PROPOSED RULE AND MAY RESUBMIT
23 A RULE SO WITHDRAWN WITH MINOR MODIFICATIONS. A RESUBMITTED RULE
24 IS A NEW FILING AND SUBJECT TO THIS SECTION, BUT IS NOT SUBJECT
25 TO FURTHER NOTICE AND HEARING AS PROVIDED IN SECTIONS 41 AND 42.

26 (10) SUBSECTIONS (2) THROUGH (9) DO NOT APPLY TO A RULE THAT
27 IS PROMULGATED UNDER THE MICHIGAN OCCUPATIONAL SAFETY AND HEALTH

1 ACT, 1974 PA 154, MCL 408.1001 TO 408.1094, THAT IS SUBSTANTIALLY
2 SIMILAR TO AN EXISTING FEDERAL STANDARD THAT HAS BEEN ADOPTED OR
3 PROMULGATED UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970,
4 PUBLIC LAW 91-596, 84 STAT. 1590.

5 SEC. 46A. (1) EXCEPT FOR A RULE PROCESSED PURSUANT TO
6 SECTION 44(2), TO PROMULGATE A RULE AN AGENCY SHALL FILE IN THE
7 OFFICE OF THE SECRETARY OF STATE 3 COPIES OF THE RULE BEARING THE
8 REQUIRED CERTIFICATES OF APPROVAL AND ADOPTION AND TRUE COPIES OF
9 THE RULE WITHOUT THE CERTIFICATES. AN AGENCY SHALL NOT FILE A
10 RULE, EXCEPT AN EMERGENCY RULE UNDER SECTION 48, EARLIER THAN THE
11 TIME PERIODS PRESCRIBED IN SECTION 45A(5), (6), (7), OR (8). A
12 RULE FILED EARLIER THAN THE TIME PERIODS DESCRIBED IN
13 SECTION 45A(5), (6), (7), OR (8) SHALL NOT TAKE EFFECT.

14 (2) THE SECRETARY OF STATE SHALL ENDORSE THE DATE AND HOUR
15 OF FILING OF RULES ON THE 3 COPIES OF THE FILING BEARING THE CER-
16 TIFICATES AND SHALL MAINTAIN A FILE CONTAINING 1 COPY FOR PUBLIC
17 INSPECTION.

18 (3) THE SECRETARY OF STATE, AS OFTEN AS HE OR SHE CONSIDERS
19 IT ADVISABLE, SHALL CAUSE TO BE ARRANGED AND BOUND IN A SUBSTAN-
20 TIAL MANNER THE RULES HEREAFTER FILED IN HIS OR HER OFFICE WITH
21 THEIR ATTACHED CERTIFICATES AND PUBLISHED IN A SUPPLEMENT TO THE
22 MICHIGAN ADMINISTRATIVE CODE. THE SECRETARY OF STATE SHALL CER-
23 TIFY UNDER HIS OR HER HAND AND SEAL OF THE STATE ON THE FRONTIS-
24 PIECE OF EACH VOLUME THAT IT CONTAINS ALL OF THE RULES FILED AND
25 PUBLISHED FOR A SPECIFIED PERIOD. THE RULES, WHEN SO BOUND AND
26 CERTIFIED, SHALL BE KEPT IN THE OFFICE OF THE SECRETARY OF STATE

1 AND NO FURTHER RECORD OF THE RULES IS REQUIRED TO BE KEPT. THE
2 BOUND RULES ARE SUBJECT TO PUBLIC INSPECTION.

3 (4) TO PROMULGATE A RULE PROCESSED PURSUANT TO
4 SECTION 44(2), AN AGENCY, AFTER THE PERIOD PROVIDED FOR WRITTEN
5 COMMENTS, SHALL FILE IN THE OFFICE OF THE SECRETARY OF STATE 3
6 COPIES OF THE RULE ALONG WITH THE APPROVAL OF THE LEGISLATIVE
7 SERVICE BUREAU AND THE DEPARTMENT OF ATTORNEY GENERAL.

8 Sec. 48. (1) If an agency finds that preservation of the
9 public health, safety, or welfare requires promulgation of an
10 emergency rule without following the notice and participation
11 procedures required by sections 41 and 42 and states in the rule
12 the agency's reasons for that finding, and the governor concurs
13 in the finding of emergency, the agency may dispense with all or
14 part of the procedures and file in the office of the secretary of
15 state the copies prescribed by section ~~46~~ 46A indorsed as an
16 emergency rule, to 3 of which copies shall be attached the cer-
17 tificates prescribed by section ~~45~~ 45A and the governor's cer-
18 tificate concurring in the finding of emergency. The emergency
19 rule is effective on filing and remains in effect until a date
20 fixed in the rule or 6 months after the date of its filing,
21 whichever is earlier. The rule may be extended once for not more
22 than 6 months by the filing of a governor's certificate of the
23 need for the extension with the office of the secretary of state
24 before expiration of the emergency rule. An emergency rule shall
25 not be numbered and shall not be compiled in the Michigan admin-
26 istrative code, but shall be noted in the annual supplement to

1 the code. The emergency rule shall be published in the Michigan
2 register pursuant to section 8.

3 (2) If the agency desires to promulgate an identical or sim-
4 ilar rule with an effectiveness beyond the final effective date
5 of an emergency rule, the agency shall comply with the procedures
6 prescribed by this act for the processing of a rule which is not
7 an emergency rule. The rule shall be published in the Michigan
8 register and in the code.

9 (3) The legislature by a concurrent resolution may rescind
10 an emergency rule promulgated pursuant to this section.

11 Sec. 122. (1) "Contested case" means a contested case as
12 defined in section 3(3) but does not include a case that is set-
13 tled or a case in which a consent agreement is entered into or a
14 proceeding for establishing a rate or approving, disapproving, or
15 withdrawing approval of a form.

16 (2) "Costs and fees" means the normal costs incurred, after
17 a party has received notice of an initial hearing under section
18 71(2), in being a party in a contested case under this act and
19 include all of the following:

20 (a) The reasonable and necessary expenses of expert wit-
21 nesses as determined by the presiding officer.

22 (b) The reasonable cost of any study, analysis, engineering
23 report, test, or project which is determined by the presiding
24 officer to have been necessary for the preparation of a party's
25 case.

26 (c) Reasonable and necessary attorney or agent fees
27 including those for purposes of appeal.

1 (3) "Party" means a party as defined in section ~~5(4)~~ 5(6),
2 but does not include any of the following:

3 (a) An individual whose net worth was more than \$500,000.00
4 at the time the contested case was initiated.

5 (b) The sole owner of an unincorporated business or any
6 partnership, corporation, association, or organization whose net
7 worth exceeded \$3,000,000.00 at the time the contested case was
8 initiated and which is not either exempt from taxation pursuant
9 to section 501(c)(3) of the internal revenue code or a coopera-
10 tive association as defined in section 15(a) of the agricultural
11 marketing act, 12 U.S.C. 1141j(a).

12 (c) The sole owner of an unincorporated business or any
13 partnership, corporation, association, or organization that had
14 more than 250 full-time equivalent employees, as determined by
15 the total number of employees multiplied by their working hours
16 divided by 40, at the time the contested case was initiated.

17 (d) As used in this subsection "net worth" means the amount
18 remaining after the deduction of liabilities from assets as
19 determined according to generally accepted accounting
20 principles.

21 (4) "Presiding officer" means an agency, 1 or more members
22 of the agency, a person designated by statute to conduct a con-
23 tested case, or a hearing officer designated and authorized by
24 the agency to conduct a contested case.

25 (5) "Prevailing party" means as follows:

1 (a) In an action involving several remedies, or issues or
2 counts which state different causes of actions or defenses, the
3 party prevailing as to each remedy, issue, or count.

4 (b) In an action involving only 1 issue or count stating
5 only 1 cause of action or defense, the party prevailing on the
6 entire record.

7 Enacting section 1. Sections 45 and 46 of the administra-
8 tive procedures act of 1969, 1969 PA 306, MCL 24.245 and 24.246,
9 are repealed.