

Act No. 491
Public Acts of 2004
Approved by the Governor
December 28, 2004
Filed with the Secretary of State
December 28, 2004
EFFECTIVE DATE: January 12, 2005

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Rep. Pappageorge

ENROLLED HOUSE BILL No. 5670

AN ACT to amend 1969 PA 306, entitled "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 certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; 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," 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:

Sec. 24. (1) Before the adoption of a guideline, an agency shall give electronic notice of the proposed guideline to the committee, the office of regulatory reform, and each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. The committee shall electronically provide the notice of the proposed guideline not later than the next business day after receipt of the notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed guideline. The notice shall be given by mail, in writing, or electronically transmitted to the last address specified by the person requesting the agency for advanced notice of proposed action that may affect that person. A request for notice is renewable each December. Any notice under this section to any member or agency of the legislative and executive branches shall be given electronically.

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

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

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

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

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

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency, or the office of regulatory reform, 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, or the office of regulatory reform acting on behalf of an agency, shall transmit copies of the notice to each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice shall be by mail, in writing, or electronically 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, or the office of regulatory reform acting on behalf of the agency, shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency, or the office of regulatory reform acting on behalf of 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, or the office of regulatory reform acting on behalf of the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications or posting on the website of the agency or the office of regulatory reform.

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

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

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

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

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

Sec. 45. (1) Except as otherwise provided for in this subsection, the agency shall submit the proposed rule to the legislative service bureau for its formal certification. The submission to the legislative service bureau for formal certification shall be in the form of electronic transmission. If requested by the legislative service bureau, the office of regulatory reform shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating a determination that a 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 of regulatory reform may issue a certificate of approval. If the submission to the legislative service bureau is returned by the legislative service bureau 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. The remainder of the 21-calendar-day time period or 6 calendar days, whichever is longer, shall be available for consideration by the legislative service bureau for formal certification of the rule. The office of regulatory reform may approve a proposed rule if it considers the proposed rule to be legal.

(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 and a copy of 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 of regulatory reform shall transmit by notice of transmittal to the committee copies of the rule, the agency reports, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office of regulatory reform. The office of regulatory reform shall also electronically submit 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) to the committee. 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 unless the proposed rule is a resubmission under section 45a(7).

(3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a regulatory impact statement containing 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) An identification of the behavior and frequency of behavior that the rule is designed to alter.

(c) 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.

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

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

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

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

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

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

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

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

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

(m) 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.

(n) 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.

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

(p) 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.

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

(r) 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.

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

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

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

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

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

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

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

(4) The agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office of regulatory reform at least 28 days before the public hearing required pursuant to section 42. Before the public hearing can be held, the regulatory impact statement must be reviewed and approved by the office of regulatory reform. 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.

(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, 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 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 sections 33, 44, and 48.

Sec. 45a. (1) Except as otherwise provided for in subsections (7) and (8), after receipt by the committee of the notice of transmittal specified in section 45(2), the committee has 15 session days in which to consider the rule and to object to the rule by filing a notice of objection approved by a concurrent majority of the committee members or the committee may, by concurrent majority, waive the remaining session days. If the committee waives the remaining session days, the clerk of the committee shall promptly notify the office of regulatory reform of the waiver by electronic transmission. A notice of objection may only be approved by the committee if the committee affirmatively determines by a concurrent majority that 1 or more of the following conditions exist:

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

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

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

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

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

(f) The rule is arbitrary or capricious.

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

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

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

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

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

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

(4) The notice of objection filed under subsection (3) stays the ability of the office of regulatory reform to file the rule with the secretary of state until the earlier of the following:

(a) Fifteen session days after the notice of objection is filed under subsection (3).

(b) The date of the rescission of the issuance of the notice of objection, approved by a concurrent majority of the committee members. The committee may meet to rescind the issuance of the notice of objection under this subdivision. If the committee rescinds the issuance of a notice of objection under this subdivision, the clerk of the committee shall promptly notify the office of regulatory reform by electronic transmission of the rescission.

(5) If the legislation introduced pursuant to subsection (3) is defeated in either house and if the vote by which the legislation failed to pass is not reconsidered in compliance with the rules of that house, or if legislation introduced pursuant to subsection (3) is not adopted by both houses within the time period specified in subsection (4), the office of regulatory reform may file the rule with the secretary of state. The rule shall take effect immediately upon filing with the secretary of state unless a later date is specified within the rule.

(6) If the legislation introduced pursuant to subsection (3) is enacted by the legislature and presented to the governor within the 15-session-day period, the rules do not become effective unless the legislation is vetoed by the governor as provided by law. If the governor vetoes the legislation, the office of regulatory reform may file the rules immediately. The rule shall take effect 7 days after the date of its filing unless a later effective date is indicated within the rule.

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

(a) With permission of the committee chair and alternate chair, the agency may withdraw the rule and resubmit it. If permission to withdraw is granted, the 15-session-day time period described in subsection (1) is tolled until the rule is resubmitted, except that the committee shall have at least 6 session days after resubmission to consider the resubmitted rule.

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

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

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

Sec. 51. If the committee, an appropriate standing committee, or a member of the legislature believes that a promulgated rule or any part thereof is unauthorized, is not within legislative intent, or is inexpedient, the committee or member may introduce a bill at a regular session, or special session if included in a governor's message, which in effect amends or rescinds the rule.

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

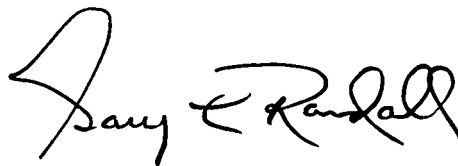
(2) The committee shall electronically notify the agency promulgating the rule, the secretary of state, and the office of regulatory reform of any rule or part of a rule the committee suspends. A rule or part of a rule suspended under this section shall not be published in the Michigan register or in the Michigan administrative code while suspended.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor