

**SUBSTITUTE FOR  
HOUSE BILL NO. 4573**

A bill to amend 1969 PA 306, entitled  
"Administrative procedures act of 1969,"  
by amending sections 3, 39, 45, and 64 (MCL 24.203, 24.239, 24.245,  
and 24.264), section 3 as amended by 1988 PA 277, section 39 as  
amended by 2004 PA 23, and section 45 as amended by 2004 PA 491.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3. (1) "Adoption of a rule" means that step in the  
2 processing of a rule consisting of the formal action of an agency  
3 establishing a rule before its promulgation.

4           (2) "Agency" means a state department, bureau, division,  
5 section, board, commission, trustee, authority or officer, created  
6 by the constitution, statute, or agency action. Agency does not  
7 include an agency in the legislative or judicial branch of state  
8 government, the governor, an agency having direct governing control

1 over an institution of higher education, the state civil service  
2 commission, or an association of insurers created under the  
3 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~  
4 ~~being sections 500.100 to 500.8302 of the Michigan Compiled Laws~~  
5 **1956 PA 218, MCL 500.100 TO 500.8302**, or other association or  
6 facility formed under ~~Act No. 218 of the Public Acts of 1956~~ **THAT**  
7 **ACT** as a nonprofit organization of insurer members.

8 (3) "Contested case" means a proceeding, including rate-  
9 making, price-fixing, and licensing, in which a determination of  
10 the legal rights, duties, or privileges of a named party is  
11 required by law to be made by an agency after an opportunity for an  
12 evidentiary hearing. When a hearing is held before an agency and an  
13 appeal from its decision is taken to another agency, the hearing  
14 and the appeal are ~~deemed to be~~ **CONSIDERED** a continuous proceeding  
15 as though before a single agency.

16 (4) "Committee" means the joint committee on administrative  
17 rules.

18 (5) "Court" means the circuit court.

19 (6) **"DECISION RECORD" MEANS, IN REGARD TO A REQUEST FOR RULE-**  
20 **MAKING WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY AN**  
21 **ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED BY STATUTE,**  
22 **BOTH OF THE FOLLOWING:**

23 (A) **THE MINUTES OF ALL MEETINGS RELATED TO THE REQUEST FOR**  
24 **RULE-MAKING.**

25 (B) **THE VOTES OF MEMBERS.**

26 (7) ~~(6)~~ "Guideline" means an agency statement or declaration  
27 of policy ~~which~~ **THAT** the agency intends to follow, ~~which~~ **THAT** does

1 not have the force or effect of law, and ~~which~~ **THAT** binds the  
2 agency but does not bind any other person.

3 Sec. 39. (1) Before initiating any changes or additions to  
4 rules, an agency shall electronically file with the office of  
5 regulatory ~~reform~~ **REINVENTION** a request for rule-making in a format  
6 prescribed by the office of regulatory ~~reform~~ **REINVENTION**. The  
7 request for rule-making shall include the following:

8 (a) The state or federal statutory or regulatory basis for the  
9 rule.

10 (b) The problem the rule intends to address.

11 (c) An assessment of the significance of the problem.

12 **(D) IF APPLICABLE, THE DECISION RECORD.**

13 **(2) IF AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY ANY**  
14 **ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED BY STATUTE**  
15 **REGARDING A REQUEST FOR RULE-MAKING, THE ADVISORY COMMITTEE OR**  
16 **ENTITY SHALL ISSUE TO THE AGENCY A DECISION RECORD.**

17 **(3) ~~(2)~~ An agency shall not proceed with the processing of a**  
18 **rule outlined in this chapter unless the office of regulatory**  
19 **~~reform~~ REINVENTION has approved the request for rule-making. THE**  
20 **OFFICE OF REGULATORY REINVENTION IS NOT REQUIRED TO APPROVE A**  
21 **REQUEST FOR RULE-MAKING AND SHALL DO SO ONLY AFTER IT HAS INDICATED**  
22 **IN ITS RESPONSE TO THE REQUEST FOR RULE-MAKING SUBMITTED BY AN**  
23 **AGENCY THAT THERE ARE APPROPRIATE AND NECESSARY POLICY AND LEGAL**  
24 **BASES FOR APPROVING THE REQUEST FOR RULE-MAKING.**

25 **(4) ~~(3)~~ The office of regulatory ~~reform~~ REINVENTION shall**  
26 **record the receipt of all requests for rule-making on the internet**  
27 **and shall make electronic or paper copies of approved requests for**

1 rule-making available to members of the general public. ~~upon~~  
2 ~~request.~~ **THE OFFICE OF REGULATORY REINVENTION SHALL ISSUE A WRITTEN**  
3 **OR ELECTRONIC RESPONSE TO THE REQUEST FOR RULE-MAKING THAT**  
4 **SPECIFICALLY ADDRESSES WHETHER THE REQUEST HAS APPROPRIATE AND**  
5 **NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE REQUEST FOR**  
6 **RULE-MAKING.**

7 (5) ~~(4)~~ The office of regulatory ~~reform~~ **REINVENTION** shall  
8 immediately make available to the committee electronic copies of  
9 the request for rule-making submitted to the office of regulatory  
10 ~~reform~~ **REINVENTION**. On a weekly basis, the office of regulatory  
11 ~~reform~~ **REINVENTION** shall electronically provide to the committee a  
12 listing of all requests for rule-making approved or denied during  
13 the previous week. The committee shall electronically provide a  
14 copy of the approved and denied requests for rule-making, not later  
15 than the next business day after receipt of the notice from the  
16 office of regulatory ~~reform~~ **REINVENTION**, to members of the  
17 committee and to members of the standing committees of the senate  
18 and house of representatives that deal with the subject matter of  
19 the proposed rule.

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

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

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

1 agency reports **CONTAINING THE REQUEST FOR RULE-MAKING**, a copy of  
 2 the regulatory impact statement, and certificates of approval from  
 3 the legislative service bureau and the office of regulatory ~~reform~~  
 4 **REINVENTION**. The office of regulatory ~~reform~~**REINVENTION** shall also  
 5 electronically submit a copy of the rule, any agency reports  
 6 required under this subsection, any regulatory impact ~~statements~~  
 7 **STATEMENT** required under subsection (3), and any ~~certificates~~  
 8 **CERTIFICATE** of approval required under subsection (1) to the  
 9 committee. The agency shall electronically transmit to the  
 10 committee the records described in this subsection within 1 year  
 11 after the date of the last public hearing on the proposed rule  
 12 unless the proposed rule is a resubmission under section 45a(7).

13 (3) Except for a rule promulgated under ~~sections~~**SECTION** 33,  
 14 44, ~~and~~**OR** 48, the agency shall prepare and include with the notice  
 15 of transmittal **THE REQUEST FOR RULE-MAKING AND THE RESPONSE FROM**  
 16 **THE OFFICE OF REGULATORY REINVENTION AND** a regulatory impact  
 17 statement. ~~containing~~**THE REGULATORY IMPACT STATEMENT SHALL CONTAIN**  
 18 all of the following information:

19 (A) **A COMPARISON OF THE PROPOSED RULE TO STANDARDS IN OTHER**  
 20 **STATES IN THE GREAT LAKES REGION OR OTHER APPLICABLE REGION AND A**  
 21 **STATEMENT OF WHETHER THE RULE EXCEEDS STANDARDS IN THOSE STATES.**

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

25 (C) ~~(b)~~An identification of the behavior and frequency of  
 26 behavior that the rule is designed to alter.

27 (D) ~~(e)~~An identification of the harm resulting from the

1 behavior that the rule is designed to alter and the likelihood that  
2 the harm will occur in the absence of the rule.

3 (E) ~~(d)~~—An estimate of the change in the frequency of the  
4 targeted behavior expected from the rule.

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

8 (G) ~~(f)~~—An identification of any reasonable alternatives to  
9 regulation pursuant to the proposed rule that would achieve the  
10 same or similar goals.

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

14 (I) ~~(h)~~—An estimate of the cost of rule imposition on the  
15 agency promulgating the rule.

16 (J) ~~(i)~~—An estimate of the actual statewide compliance costs  
17 of the proposed rule on individuals.

18 (K) ~~(j)~~—An estimate of the actual statewide compliance costs  
19 of the proposed rule on businesses and other groups.

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

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

25 (N) ~~(m)~~—An analysis of the costs of compliance for all small  
26 businesses affected by the proposed rule, including costs of  
27 equipment, supplies, labor, and increased administrative costs.

1           (O) ~~(n)~~—An identification of the nature and estimated cost of  
2 any legal consulting and accounting services that small businesses  
3 would incur in complying with the proposed rule.

4           (P) ~~(e)~~—An estimate of the ability of small businesses to  
5 absorb the costs estimated under subdivisions ~~(l) through (n)~~ **(M) TO**  
6 **(O)** without suffering economic harm and without adversely affecting  
7 competition in the marketplace.

8           (Q) ~~(p)~~—An estimate of the cost, if any, to the agency of  
9 administering or enforcing a rule that exempts or sets lesser  
10 standards for compliance by small businesses.

11           (R) ~~(q)~~—An identification of the impact on the public interest  
12 of exempting or setting lesser standards of compliance for small  
13 businesses.

14           (S) ~~(r)~~—A statement describing the manner in which the agency  
15 reduced the economic impact of the rule on small businesses or a  
16 statement describing the reasons such a reduction was not feasible.

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

19           (U) ~~(t)~~—An estimate of the primary and direct benefits of the  
20 rule.

21           (V) ~~(u)~~—An estimate of any cost reductions to businesses,  
22 individuals, groups of individuals, or governmental units as a  
23 result of the rule.

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

26           (X) ~~(w)~~—An estimate of any secondary or indirect benefits of  
27 the rule.



1           (Y) ~~(x)~~—An identification of the sources the agency relied  
2 upon in compiling the regulatory impact statement, **INCLUDING THE**  
3 **METHODOLOGY UTILIZED IN DETERMINING THE EXISTENCE AND EXTENT OF THE**  
4 **IMPACT OF A PROPOSED RULE AND A COST-BENEFIT ANALYSIS OF THE**  
5 **PROPOSED RULE.**

6           (Z) **A DETAILED RECITATION OF THE EFFORTS OF THE AGENCY TO**  
7 **COMPLY WITH THE MANDATE TO REDUCE THE DISPROPORTIONATE IMPACT OF**  
8 **THE RULE UPON SMALL BUSINESSES AS DESCRIBED IN SECTION 40(1)(A) TO**  
9 **(D).**

10           (AA) ~~(y)~~—Any other information required by the office of  
11 regulatory ~~reform~~ **REINVENTION.**

12           (4) The agency shall electronically transmit the regulatory  
13 impact statement required under subsection (3) to the office of  
14 regulatory ~~reform~~ **REINVENTION** at least 28 days before the public  
15 hearing required ~~pursuant to~~ **UNDER** section 42. Before the public  
16 hearing can be held, the regulatory impact statement must be  
17 reviewed and approved by the office of regulatory ~~reform~~  
18 **REINVENTION.** The agency shall also electronically transmit a copy  
19 of the regulatory impact statement to the committee before the  
20 public hearing and the agency shall make copies available to the  
21 public at the public hearing. **THE AGENCY SHALL PUBLISH THE**  
22 **REGULATORY IMPACT STATEMENT APPROVED BY THE OFFICE OF REGULATORY**  
23 **REINVENTION ON ITS WEBSITE AT LEAST 10 DAYS BEFORE THE DATE OF THE**  
24 **PUBLIC HEARING.**

25           (5) The committee shall electronically transmit to the senate  
26 fiscal agency and the house fiscal agency a copy of each rule and  
27 regulatory impact statement filed with the committee, as well as a

1 copy of the agenda identifying the proposed rules to be considered  
2 by the committee. The senate fiscal agency and the house fiscal  
3 agency shall analyze each proposed rule for possible fiscal  
4 implications that, if the rule were adopted, would result in  
5 additional appropriations in the current fiscal year or commit the  
6 legislature to an appropriation in a future fiscal year. The senate  
7 fiscal agency and the house fiscal agency shall electronically  
8 report their findings to the senate and house appropriations  
9 committees and to the committee before the date of consideration of  
10 the proposed rule by the committee.

11 (6) Subsections (2), (3), and (4) do not apply to a rule that  
12 is promulgated under ~~sections~~**SECTION** 33, 44, and ~~OR~~ 48.

13 Sec. 64. Unless an exclusive procedure or remedy is provided  
14 by a statute governing the agency, the validity or applicability of  
15 a rule, **INCLUDING THE FAILURE OF AN AGENCY TO ACCURATELY ASSESS THE**  
16 **IMPACT OF THE RULE ON BUSINESSES, INCLUDING SMALL BUSINESSES, IN**  
17 **ITS REGULATORY IMPACT STATEMENT**, may be determined in an action for  
18 declaratory judgment ~~when~~**IF** the court finds that the rule or its  
19 threatened application interferes with or impairs, or imminently  
20 threatens to interfere with or impair, the legal rights or  
21 privileges of the plaintiff. The action shall be filed in the  
22 circuit court of the county where the plaintiff resides or has his  
23 **OR HER** principal place of business in this state or in the circuit  
24 court for Ingham county. The agency shall be made a party to the  
25 action. An action for declaratory judgment may not be commenced  
26 under this section unless the plaintiff has first requested the  
27 agency for a declaratory ruling and the agency has denied the

1 request or failed to act upon it expeditiously. This section shall  
2 not be construed to prohibit the determination of the validity or  
3 applicability of the rule in any other action or proceeding in  
4 which its invalidity or inapplicability is asserted.