

SUBSTITUTE FOR  
SENATE BILL NO. 276

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 3, 39, and 122 (MCL 24.203, 24.239, and 24.322), section 3 as amended by 1988 PA 277, section 39 as amended by 2004 PA 23, and section 122 as added by 1984 PA 196, and by adding section 45b.

**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) **"ADVISORY COMMITTEE" MEANS ANY ADVISORY COMMITTEE OR OTHER**  
5 **ADVISORY ENTITY THAT DEVELOPS AND RECOMMENDS SPECIFIC LANGUAGE TO**  
6 **AN AGENCY FOR PROPOSED RULES.**

7           (3) ~~(2)~~-"Agency" means a state department, bureau, division,

1 section, board, commission, trustee, authority or officer, created  
2 by the constitution, statute, or agency action. Agency does not  
3 include an agency in the legislative or judicial branch of state  
4 government, the governor, an agency having direct governing control  
5 over an institution of higher education, the state civil service  
6 commission, or an association of insurers created under the  
7 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~  
8 ~~being sections 500.100 to 500.8302 of the Michigan Compiled Laws~~  
9 **1956 PA 218, MCL 500.100 TO 500.8302**, or other association or  
10 facility formed under ~~Act No. 218 of the Public Acts of 1956~~ **THAT**  
11 **ACT** as a nonprofit organization of insurer members.

12 (4) ~~(3)~~ "Contested case" means a proceeding, including rate-  
13 making, price-fixing, and licensing, in which a determination of  
14 the legal rights, duties, or privileges of a named party is  
15 required by law to be made by an agency after an opportunity for an  
16 evidentiary hearing. When a hearing is held before an agency and an  
17 appeal from its decision is taken to another agency, the hearing  
18 and the appeal are ~~deemed to be~~ **CONSIDERED** a continuous proceeding  
19 as though before a single agency.

20 (5) ~~(4)~~ "Committee" means the joint committee on  
21 administrative rules.

22 (6) ~~(5)~~ "Court" means the circuit court.

23 (7) **"DECISION RECORD" MEANS, IF AN ADVISORY COMMITTEE HAS MADE**  
24 **RECOMMENDATIONS OR COMMENTS TO AN AGENCY IN REGARD TO A REQUEST FOR**  
25 **RULE-MAKING, ALL OF THE FOLLOWING:**

26 (A) **THE MINUTES OF ALL MEETINGS OF THE ADVISORY COMMITTEE**  
27 **RELATED TO THE REQUEST FOR RULE-MAKING.**

1 (B) THE VOTES OF MEMBERS OF THE ADVISORY COMMITTEE.

2 (C) A SUMMARY OF THE DISCUSSION AND REASONING IN SUPPORT OF  
3 THE ADVISORY COMMITTEE'S RECOMMENDATIONS OR COMMENTS.

4 (8) ~~(6)~~ "Guideline" means an agency statement or declaration  
5 of policy ~~which~~ **THAT** the agency intends to follow, ~~which~~ **THAT** does  
6 not have the force or effect of law, and ~~which~~ **THAT** binds the  
7 agency but does not bind any other person.

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

13 (a) The state or federal statutory or regulatory basis for the  
14 rule.

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

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

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

18 (2) **IF AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY ANY**  
19 **ADVISORY COMMITTEE, THE ADVISORY COMMITTEE SHALL ISSUE TO THE**  
20 **AGENCY THE DECISION RECORD. THE DECISION RECORD SHALL BE POSTED ON**  
21 **AN AGENCY WEBSITE NOT LESS THAN 60 DAYS BEFORE THE REQUEST FOR**  
22 **RULE-MAKING IS SUBMITTED TO THE OFFICE OF REGULATORY REINVENTION.**

23 (3) ~~(2)~~ An agency shall not proceed with the processing of a  
24 rule outlined in this chapter unless the office of regulatory  
25 ~~reform~~ **REINVENTION** has approved the request for rule-making. **THE**  
26 **OFFICE OF REGULATORY REINVENTION IS NOT REQUIRED TO APPROVE A**  
27 **REQUEST FOR RULE-MAKING AND SHALL DO SO ONLY AFTER IT HAS INDICATED**

1 IN ITS RESPONSE TO THE REQUEST FOR RULE-MAKING SUBMITTED BY AN  
2 AGENCY THAT THERE ARE APPROPRIATE AND NECESSARY POLICY AND LEGAL  
3 BASES FOR APPROVING THE REQUEST FOR RULE-MAKING.

4 (4) ~~(3)~~—The office of regulatory ~~reform~~ REINVENTION shall  
5 record the receipt of all requests for rule-making on the internet  
6 and shall make electronic or paper copies of approved requests for  
7 rule-making available to members of the general public. ~~upon~~  
8 ~~request.~~—THE OFFICE OF REGULATORY REINVENTION SHALL ISSUE A WRITTEN  
9 OR ELECTRONIC RESPONSE TO THE REQUEST FOR RULE-MAKING THAT  
10 SPECIFICALLY ADDRESSES WHETHER THERE ARE APPROPRIATE AND NECESSARY  
11 POLICY AND LEGAL BASES FOR APPROVING THE REQUEST FOR RULE-MAKING.

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

25 SEC. 45B. (1) THE OFFICE OF REGULATORY REINVENTION SHALL POST  
26 THE FOLLOWING ON ITS WEBSITE WITHIN 2 BUSINESS DAYS AFTER  
27 TRANSMITTAL PURSUANT TO SECTION 45:

1 (A) THE REGULATORY IMPACT STATEMENT REQUIRED UNDER SECTION  
2 45(3).

3 (B) INSTRUCTIONS ON ANY EXISTING ADMINISTRATIVE REMEDIES OR  
4 APPEALS AVAILABLE TO THE PUBLIC.

5 (C) INSTRUCTIONS REGARDING THE METHOD OF COMPLYING WITH THE  
6 RULES, IF AVAILABLE.

7 (D) ANY RULES FILED WITH THE SECRETARY OF STATE AND THE  
8 EFFECTIVE DATE OF THOSE RULES.

9 (2) THE OFFICE OF REGULATORY REINVENTION SHALL FACILITATE  
10 LINKING THE INFORMATION POSTED UNDER SUBSECTION (1) TO THE  
11 DEPARTMENT OR AGENCY WEBSITE.

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

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

21 (a) The reasonable and necessary expenses of expert witnesses  
22 as determined by the presiding officer.

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

27 (c) Reasonable and necessary attorney or agent fees including

1 those for purposes of appeal.

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

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

6 (b) The sole owner of an unincorporated business or any  
7 partnership, corporation, association, or organization whose net  
8 worth exceeded \$3,000,000.00 at the time the contested case was  
9 initiated and ~~which~~**THAT** is not either exempt from taxation  
10 pursuant to section 501(c)(3) of the internal revenue code, **26 USC**  
11 **501**, or a cooperative association as defined in section 15(a) of  
12 the agricultural marketing act, ~~12 U.S.C.~~**USC** 1141j(a).

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

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

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

25 (5) "Prevailing party" means ~~as follows~~**EITHER OF THE**  
26 **FOLLOWING, AS APPLICABLE:**

27 (a) In an action involving several remedies, or issues or

1 counts ~~which~~ **THAT** state different causes of actions or defenses,  
2 the party prevailing as to each remedy, issue, or count.

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