

HOUSE BILL No. 4573

April 21, 2011, Introduced by Rep. Haines and referred to the Committee on Regulatory Reform.

A bill to amend 1969 PA 306, entitled "Administrative procedures act of 1969," by amending sections 3, 32, 39, 40, 43, 45, 61, and 64 (MCL 24.203, 24.232, 24.239, 24.240, 24.243, 24.245, 24.261, and 24.264), section 3 as amended by 1988 PA 277, section 39 as amended by 2004 PA 23, section 40 as amended by 1999 PA 262, section 43 as amended by 1989 PA 288, section 45 as amended by 2004 PA 491, and section 61 as amended by 1982 PA 413, 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

1 processing of a rule consisting of the formal action of an agency
2 establishing a rule before its promulgation.

3 (2) "Agency" means a state department, bureau, division,
4 section, board, commission, trustee, authority or officer, created
5 by the constitution, statute, or agency action. Agency does not
6 include an agency in the legislative or judicial branch of state
7 government, the governor, an agency having direct governing control
8 over an institution of higher education, the state civil service
9 commission, or an association of insurers created under the
10 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~
11 ~~being sections 500.100 to 500.8302 of the Michigan Compiled Laws~~
12 **1956 PA 218, MCL 500.100 TO 500.8302**, or other association or
13 facility formed under ~~Act No. 218 of the Public Acts of 1956~~ **THAT**
14 **ACT** as a nonprofit organization of insurer members.

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

23 (4) "Committee" means the joint committee on administrative
24 rules.

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

26 (6) **"DECISION RECORD" MEANS, IN REGARD TO A REQUEST FOR RULE-**
27 **MAKING WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY AN**

1 ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED BY LAW, ALL OF
2 THE FOLLOWING:

3 (A) THE MINUTES OF ALL MEETINGS RELATED TO THE REQUEST FOR
4 RULE-MAKING.

5 (B) THE VOTES OF MEMBERS.

6 (C) THE DISCUSSION AND REASONING IN SUPPORT OF THE DECISION.

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

11 Sec. 32. (1) Definitions of words and phrases and rules of
12 construction prescribed in any statute ~~, and which~~ **THAT** are made
13 applicable to all statutes of this state ~~, also~~ **SHALL** apply to
14 rules unless clearly indicated to the contrary.

15 (2) A rule or exception to a rule shall not discriminate in
16 favor of or against any person. ~~, and a~~ **A** person affected by a rule
17 is entitled to the same benefits as any other person under the same
18 or similar circumstances.

19 (3) The violation of a rule is a crime when so provided by
20 statute. ~~A~~ **UNLESS PROVIDED FOR BY STATUTE, A** rule shall not ~~make an~~
21 ~~act or omission to act~~ **DESIGNATE AS** a crime ~~or~~ **AN ACT OR OMISSION**
22 **AND SHALL NOT** prescribe a criminal penalty for violation of a rule.

23 (4) An agency may adopt, by reference in its rules and without
24 publishing the adopted matter in full, all or any part of a code,
25 standard or regulation ~~which~~ **THAT** has been adopted by an agency of
26 the United States or by a nationally recognized organization or
27 association. The reference shall fully identify the adopted matter

1 by date and otherwise. The reference shall not cover any later
2 amendments and editions of the adopted matter, but if the agency
3 wishes to incorporate them in its rule it shall amend the rule or
4 promulgate a new rule therefor. The agency shall have available
5 copies of the adopted matter for inspection and distribution to the
6 public at cost and the rules shall state where copies of the
7 adopted matter are available from the agency and the agency of the
8 United States or the national organization or association and the
9 cost thereof as of the time the rule is adopted.

10 (5) AN AGENCY SHALL NOT PROMULGATE OR ADOPT A RULE MORE
11 STRINGENT THAN AN APPLICABLE FEDERAL STANDARD UNLESS SPECIFICALLY
12 AUTHORIZED BY STATUTE.

13 (6) IF AN AGENCY ADOPTS RULES IN ORDER TO IMPLEMENT A
14 FEDERALLY DELEGATED PROGRAM, THE AGENCY SHALL ADOPT THE RULES AND
15 STANDARDS AS PROMULGATED OR ADOPTED BY THE FEDERAL GOVERNMENT
16 UNLESS A MORE EFFICIENT PROCESS IS SPECIFICALLY AUTHORIZED BY
17 STATUTE.

18 (7) A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL
19 MANUAL, OR FORM WITH INSTRUCTIONS SHALL NOT BE GIVEN THE FORCE AND
20 EFFECT OF LAW BY THE AGENCY AND IS CONSIDERED MERELY ADVISORY. AN
21 AGENCY SHALL NOT RELY UPON A GUIDELINE, BULLETIN, INTERPRETIVE
22 STATEMENT, OPERATIONAL MANUAL, OR FORM WITH INSTRUCTIONS TO SUPPORT
23 AN AGENCY'S DECISION TO ACT OR REFUSE TO ACT IF THAT DECISION IS
24 SUBJECT TO JUDICIAL REVIEW. A COURT SHALL NOT RELY UPON A
25 GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OPERATIONAL MANUAL, OR
26 FORM WITH INSTRUCTIONS TO UPHOLD SUCH AN AGENCY DECISION.

27 (8) WHERE A STATUTE PROVIDES THAT AN AGENCY MAY PROCEED BY

1 RULE-MAKING OR BY ORDER AND AN AGENCY PROCEEDS BY ORDER IN LIEU OF
2 RULE-MAKING, THE ORDER SHALL NOT BE GIVEN GENERAL APPLICABILITY TO
3 PERSONS WHO WERE NOT PARTIES TO THE PROCEEDING OR CONTESTED CASE
4 PRIOR TO THE ISSUANCE OF THE ORDER.

5 (9) A RULE SHALL NOT EXCEED THE RULE-MAKING DELEGATION
6 CONTAINED IN THE STATUTE AUTHORIZING THE RULE-MAKING.

7 Sec. 39. (1) Before initiating any changes or additions to
8 rules, an agency shall electronically file with the **STATE** office of
9 ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND RULES** a request for
10 rule-making in a format prescribed by the **STATE** office of
11 ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND RULES**. The request
12 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) IN THE CASE WHERE AN AGENCY RECEIVES RECOMMENDATIONS OR
19 COMMENTS BY ANY ADVISORY COMMITTEE OR OTHER ADVISORY ENTITY CREATED
20 BY LAW REGARDING A REQUEST FOR RULE-MAKING, THE ADVISORY COMMITTEE
21 OR ENTITY SHALL ISSUE TO THE AGENCY A DECISION RECORD. THE DECISION
22 RECORD SHALL BE POSTED ON AN AGENCY WEBSITE NOT LESS THAN 60 DAYS
23 BEFORE THE REQUEST FOR RULE-MAKING IS SUBMITTED TO THE STATE OFFICE
24 OF ADMINISTRATIVE HEARINGS AND RULES.

25 (3) ~~(2)~~An agency shall not proceed with the processing of a
26 rule outlined in this chapter unless the **STATE** office of ~~regulatory~~
27 ~~reform~~**ADMINISTRATIVE HEARINGS AND RULES** has approved the request

1 for rule-making. **THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND**
2 **RULES IS NOT REQUIRED TO APPROVE A REQUEST FOR RULE-MAKING AND**
3 **SHALL DO SO ONLY AFTER IT HAS INDICATED IN ITS RESPONSE TO THE**
4 **REQUEST FOR RULE-MAKING SUBMITTED BY AN AGENCY THAT THERE ARE**
5 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
6 **REQUEST FOR RULE-MAKING.**

7 (4) ~~(3)~~ The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
8 **HEARINGS AND RULES** shall record the receipt of all requests for
9 rule-making on the internet and shall make electronic or paper
10 copies of approved requests for rule-making available to members of
11 the general public. ~~upon request.~~ **THE STATE OFFICE OF**
12 **ADMINISTRATIVE HEARINGS AND RULES SHALL ISSUE A WRITTEN OR**
13 **ELECTRONIC RESPONSE TO THE REQUEST FOR RULE-MAKING THAT**
14 **SPECIFICALLY ADDRESSES THE ISSUES OF WHETHER THE REQUEST HAS**
15 **APPROPRIATE AND NECESSARY POLICY AND LEGAL BASES FOR APPROVING THE**
16 **REQUEST FOR RULE-MAKING.**

17 (5) ~~(4)~~ The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
18 **HEARINGS AND RULES** shall immediately make available to the
19 committee electronic copies of the request for rule-making
20 submitted to the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
21 **HEARINGS AND RULES**. On a weekly basis, the **STATE** office of
22 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall
23 electronically provide to the committee a listing of all requests
24 for rule-making approved or denied during the previous week. The
25 committee shall electronically provide a copy of the approved and
26 denied requests for rule-making, not later than the next business
27 day after receipt of the notice from the **STATE** office of ~~regulatory~~

1 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES**, to members of the
2 committee and to members of the standing committees of the senate
3 and house of representatives that deal with the subject matter of
4 the proposed rule.

5 Sec. 40. (1) When an agency proposes to adopt a rule that will
6 apply to a small business and the rule will have a disproportionate
7 impact on small businesses because of the size of those businesses,
8 the agency **SHALL CONSIDER EXEMPTING SMALL BUSINESSES AND, IF SMALL**
9 **BUSINESSES ARE NOT EXEMPTED, THE AGENCY** proposing to adopt the rule
10 shall reduce the economic impact of the rule on small businesses by
11 doing ~~1 or more~~ **ALL** of the following when it is lawful and feasible
12 in meeting the objectives of the act authorizing the promulgation
13 of the rule:

14 **(A) IDENTIFY AND ESTIMATE THE NUMBER OF SMALL BUSINESSES**
15 **AFFECTED BY THE PROPOSED RULE AND ITS PROBABLE EFFECT ON SMALL**
16 **BUSINESSES.**

17 **(B) ~~(a)~~ Establish differing compliance or reporting**
18 **requirements or timetables for small businesses under the rule**
19 **AFTER PROJECTING THE REQUIRED REPORTING, RECORD-KEEPING, AND OTHER**
20 **ADMINISTRATIVE COSTS.**

21 **(C) ~~(b)~~ Consolidate, ~~or~~ simplify, OR ELIMINATE** the compliance
22 **and reporting requirements for small businesses under the rule AND**
23 **IDENTIFY THE SKILLS NECESSARY TO COMPLY WITH THE REPORTING**
24 **REQUIREMENTS.**

25 **(D) ~~(c)~~ Establish performance rather than design standards,**
26 **~~when appropriate~~ STANDARDS TO REPLACE DESIGN OR OPERATIONAL**
27 **STANDARDS REQUIRED IN THE PROPOSED RULE.**

1 ~~_____ (d) Exempt small businesses from any or all of the~~
 2 ~~requirements of the rule.~~

3 (2) **THE FACTORS DESCRIBED IN SUBSECTION (1) (A) THROUGH (D)**
 4 **SHALL BE SPECIFICALLY ADDRESSED IN THE SMALL BUSINESS IMPACT**
 5 **STATEMENT.**

6 (3) ~~(2) If appropriate in~~ **IN** reducing the disproportionate
 7 economic impact on small business of a rule as provided in
 8 subsection (1), an agency ~~may~~ **SHALL** use the following
 9 classifications of small business:

- 10 (a) 0-9 full-time employees.
 11 (b) 10-49 full-time employees.
 12 (c) 50-249 full-time employees.

13 (4) ~~(3)~~ For purposes of subsection ~~(2)~~ **(3)**, an agency may
 14 include a small business with a greater number of full-time
 15 employees in a classification that applies to a business with fewer
 16 full-time employees.

17 (5) ~~(4)~~ This section and section 45(3) do not apply to a rule
 18 ~~which~~ **THAT** is required by federal law and ~~which~~ **THAT** an agency
 19 promulgates without imposing standards more stringent than those
 20 required by the federal law.

21 Sec. 43. (1) Except in the case of an emergency rule
 22 promulgated in the manner described in section 48, a rule is not
 23 valid unless processed in compliance with ~~section 42~~ **SECTIONS 39,**
 24 **40, 42, AND 45(3)** and unless in substantial compliance with section
 25 41(2), (3), (4), and (5).

26 (2) A proceeding to contest **THE VALIDITY OF THE PROCESSING OF**
 27 a rule on the ground of noncompliance with the requirements of

1 ~~sections 41 and~~ SECTION 39, 40, 41(2), (3), (4), OR (5), 42, OR
2 45(3), OR ANY COMBINATION THEREOF, shall be commenced within 2
3 years after the effective date of the rule.

4 (3) AN AGENCY DETERMINED TO HAVE VIOLATED THIS CHAPTER
5 REGARDING THE PROCESSING OF A RULE IS SUBJECT TO DAMAGES AS A
6 RESULT OF AN ACTION BROUGHT BY A PERSON UNDER SECTION 64(2).

7 Sec. 45. (1) Except as otherwise provided for in this
8 subsection, the agency shall submit the proposed rule to the
9 legislative service bureau for its formal certification. The
10 submission to the legislative service bureau for formal
11 certification shall be in the form of electronic transmission. If
12 requested by the legislative service bureau, the **STATE** office of
13 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also
14 transmit up to 4 paper copies of the proposed rule. The legislative
15 service bureau shall promptly issue a certificate of approval
16 indicating a determination that a proposed rule is proper as to all
17 matters of form, classification, and arrangement. If the
18 legislative service bureau fails to issue a certificate of approval
19 within 21 calendar days after receipt of the submission for formal
20 certification, the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
21 **HEARINGS AND RULES** may issue a certificate of approval. If the
22 submission to the legislative service bureau is returned by the
23 legislative service bureau to the agency before the expiration of
24 the 21-calendar-day time period, the 21-calendar-day time period is
25 tolled until the rule is resubmitted by the agency. The remainder
26 of the 21-calendar-day time period or 6 calendar days, whichever is
27 longer, shall be available for consideration by the legislative

1 service bureau for formal certification of the rule. The **STATE**
2 office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** may
3 approve a proposed rule if it considers the proposed rule to be
4 legal **AND APPROPRIATE**.

5 (2) Except as provided in subsection (6), after notice is
6 given as provided in this act and before the agency proposing the
7 rule has formally adopted the rule, the agency shall prepare an
8 agency report containing a synopsis of the comments contained in
9 the public hearing record and a copy of the **REQUEST FOR RULE-MAKING**
10 **AND THE** regulatory impact statement required under subsection (3).
11 In the report, the agency shall describe any changes in the
12 proposed rules that were made by the agency after the public
13 hearing. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
14 **HEARINGS AND RULES** shall transmit by notice of transmittal to the
15 committee copies of the rule, the agency reports **CONTAINING THE**
16 **REQUEST FOR RULE-MAKING**, a copy of the regulatory impact statement,
17 and certificates of approval from the legislative service bureau
18 and the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS**
19 **AND RULES**. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
20 **HEARINGS AND RULES** shall also electronically submit a copy of the
21 rule, any agency reports required under this subsection, any
22 regulatory impact ~~statements~~ **STATEMENT OR SMALL BUSINESS IMPACT**
23 **STATEMENT** required under subsection (3), and any ~~certificates~~
24 **CERTIFICATE** of approval required under subsection (1) to the
25 committee. The agency shall electronically transmit to the
26 committee the records described in this subsection within 1 year
27 after the date of the last public hearing on the proposed rule

1 unless the proposed rule is a resubmission under section 45a(7).

2 (3) Except for a rule promulgated under ~~sections~~ **SECTION 33,**
3 44, ~~and~~ **OR 48,** the agency shall prepare and include with the notice
4 of transmittal **THE REQUEST FOR RULE-MAKING AND THE RESPONSE FROM**
5 **THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES, A SMALL**
6 **BUSINESS IMPACT STATEMENT PREPARED UNDER SECTION 40(1), AND** a
7 regulatory impact statement. ~~containing~~ **THE REGULATORY IMPACT**
8 **STATEMENT SHALL CONTAIN** all of the following information:

9 (A) **A COMPARISON OF THE PROPOSED RULE TO STANDARDS IN OTHER**
10 **STATES IN THE GREAT LAKES REGION AND A STATEMENT OF WHETHER THE**
11 **RULE EXCEEDS STANDARDS IN SUCH CASES.**

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

15 (C) ~~(b)~~—An identification of the behavior and frequency of
16 behavior that the rule is designed to alter.

17 (D) ~~(c)~~—An identification of the harm resulting from the
18 behavior that the rule is designed to alter and the likelihood that
19 the harm will occur in the absence of the rule.

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

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

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

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

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

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

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

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

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

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

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

21 (P) ~~(o)~~—An estimate of the ability of small businesses to
22 absorb the costs estimated under subdivisions ~~(l)~~—(M) through ~~(n)~~
23 (O) without suffering economic harm and without adversely affecting
24 competition in the marketplace.

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

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

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

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

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

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

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

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

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

23 (Z) **A DETAILED RECITATION OF THE EFFORTS OF THE AGENCY TO**
24 **COMPLY WITH THE MANDATE TO REDUCE THE DISPROPORTIONATE IMPACT OF**
25 **THE RULE UPON SMALL BUSINESSES AS DESCRIBED IN SECTION 40(1)(A)**
26 **THROUGH (D).**

27 (AA) ~~(y)~~—Any other information required by the **STATE** office of

1 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES.**

2 (4) The agency shall electronically transmit the regulatory
3 impact statement required under subsection (3) to the **STATE** office
4 of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** at least 28
5 days before the public hearing required pursuant to section 42.
6 Before the public hearing can be held, the regulatory impact
7 statement must be reviewed and approved by the **STATE** office of
8 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES.** The agency
9 shall also electronically transmit a copy of the regulatory impact
10 statement to the committee before the public hearing and the agency
11 shall make copies available to the public at the public hearing.
12 **THE AGENCY SHALL PUBLISH THE REGULATORY IMPACT STATEMENT ON ITS**
13 **WEBSITE AT LEAST 10 DAYS BEFORE THE DATE OF THE PUBLIC HEARING.**

14 (5) The committee shall electronically transmit to the senate
15 fiscal agency and the house fiscal agency a copy of each rule and
16 regulatory impact statement filed with the committee, as well as a
17 copy of the agenda identifying the proposed rules to be considered
18 by the committee. The senate fiscal agency and the house fiscal
19 agency shall analyze each proposed rule for possible fiscal
20 implications that, if the rule were adopted, would result in
21 additional appropriations in the current fiscal year or commit the
22 legislature to an appropriation in a future fiscal year. The senate
23 fiscal agency and the house fiscal agency shall electronically
24 report their findings to the senate and house appropriations
25 committees and to the committee before the date of consideration of
26 the proposed rule by the committee.

27 (6) Subsections (2), (3), and (4) do not apply to a rule that

1 is promulgated under ~~sections~~ SECTION 33, 44, and OR 48.

2 SEC. 45B. (1) THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND
3 RULES SHALL POST THE FOLLOWING ON ITS WEBSITE WITHIN 2 BUSINESS
4 DAYS AFTER TRANSMITTAL PURSUANT TO SECTION 45:

5 (A) THE SMALL BUSINESS IMPACT STATEMENT AND REGULATORY IMPACT
6 STATEMENT RECEIVED UNDER SECTION 45(3).

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

9 (C) INSTRUCTIONS REGARDING THE METHOD OF COMPLYING WITH THE
10 RULES, IF AVAILABLE.

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

13 (2) THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
14 SHALL FACILITATE LINKING THE INFORMATION CONTAINED IN SUBSECTION
15 (1) TO THE DEPARTMENT OR AGENCY WEBSITE.

16 Sec. 61. (1) The filing of a rule under this act raises a
17 rebuttable presumption that the rule was adopted, filed with the
18 secretary of state, and made available for public inspection as
19 required by this act.

20 (2) The publication of a rule in the Michigan register, the
21 Michigan administrative code, or in an annual supplement to the
22 code raises a rebuttable presumption that **THE FOLLOWING OCCURRED:**

23 (a) The rule was adopted, filed with the secretary of state,
24 and made available for public inspection as required by this act.

25 (b) The rule printed in the publication is a true and correct
26 copy of the promulgated rule.

27 ~~—(c) All requirements of this act relative to the rule have~~

1 ~~been complied with.~~

2 (3) The courts shall take judicial notice of a rule which
3 becomes effective under this act.

4 Sec. 64. (1) Unless an exclusive procedure or remedy is
5 provided by a statute governing the agency, the validity or
6 applicability of a rule, **INCLUDING THE FAILURE OF AN AGENCY TO**
7 **ASSESS THE IMPACT OF THE RULE ON BUSINESSES, INCLUDING SMALL**
8 **BUSINESSES, IN ITS REGULATORY IMPACT STATEMENT,** may be determined
9 in an action for declaratory judgment when the court finds that the
10 rule or its threatened application interferes with or impairs, or
11 imminently threatens to interfere with or impair, the legal rights
12 or privileges of the plaintiff. The action shall be filed in the
13 circuit court of the county where the plaintiff resides or has his
14 principal place of business in this state or in the circuit court
15 for Ingham county. The agency shall be made a party to the action.
16 ~~An action for declaratory judgment may not be commenced under this~~
17 ~~section unless the plaintiff has first requested the agency for a~~
18 ~~declaratory ruling and the agency has denied the request or failed~~
19 ~~to act upon it expeditiously.~~ This section shall not be construed
20 to prohibit the determination of the validity or applicability of
21 the rule in any other action or proceeding in which its invalidity
22 or inapplicability is asserted.

23 (2) **A PERSON ALLEGING A VIOLATION OF CHAPTER 3 REGARDING THE**
24 **PROCESSING OF A RULE, AS DESCRIBED IN SECTION 43(3), MAY BRING AN**
25 **ACTION IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE PLAINTIFF**
26 **RESIDES OR IN THE CIRCUIT COURT FOR INGHAM COUNTY FOR AN AWARD OF**
27 **DAMAGES. IF THE COURT DETERMINES THAT SUCH A VIOLATION HAS**

1 OCCURRED, IT MAY AWARD UP TO 10 TIMES THE COST OF ANY PERMIT FEES
2 PAID BY THE PLAINTIFF UNDER THE RULE AS WELL AS THE ACTUAL AND
3 REASONABLE COSTS RELATING TO WITNESS AND ATTORNEY FEES.