

SENATE BILL No. 276

March 17, 2011, Introduced by Senators ROBERTSON, NOFS, COLBECK, MARLEAU, EMMONS, BOOHER, PROOS, KAHN and SCHUITMAKER and referred to the Committee on Economic Development.

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 **STATE** office of
10 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** a request for
11 rule-making in a format prescribed by the **STATE** office of
12 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**. The request
13 for rule-making shall include the following:

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

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

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

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

19 (2) **IF AN AGENCY RECEIVES RECOMMENDATIONS OR COMMENTS BY ANY**
20 **ADVISORY COMMITTEE, THE ADVISORY COMMITTEE SHALL ISSUE TO THE**
21 **AGENCY THE DECISION RECORD. THE DECISION RECORD SHALL BE POSTED ON**
22 **AN AGENCY WEBSITE NOT LESS THAN 60 DAYS BEFORE THE REQUEST FOR**
23 **RULE-MAKING IS SUBMITTED TO THE STATE OFFICE OF ADMINISTRATIVE**
24 **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 WHETHER THERE ARE APPROPRIATE AND NECESSARY**
15 **POLICY AND LEGAL BASES FOR APPROVING THE REQUEST FOR RULE-MAKING.**

16 (5) ~~(4)~~ ~~The STATE office of regulatory reform~~ **ADMINISTRATIVE**
17 **HEARINGS AND RULES** shall immediately make available to the
18 committee electronic copies of the request for rule-making
19 submitted to the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**
20 **HEARINGS AND RULES**. On a weekly basis, the **STATE** office of
21 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall
22 electronically provide to the committee a listing of all requests
23 for rule-making approved or denied during the previous week. The
24 committee shall electronically provide a copy of the approved and
25 denied requests for rule-making, not later than the next business
26 day after receipt of the notice from the **STATE** office of ~~regulatory~~
27 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES**, to members of the

1 committee and to members of the standing committees of the senate
2 and house of representatives that deal with the subject matter of
3 the proposed rule.

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

7 (A) THE REGULATORY IMPACT STATEMENT REQUIRED UNDER SECTION
8 45(3).

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

11 (C) INSTRUCTIONS REGARDING THE METHOD OF COMPLYING WITH THE
12 RULES, IF AVAILABLE.

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

15 (2) THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
16 SHALL FACILITATE LINKING THE INFORMATION POSTED UNDER SUBSECTION
17 (1) TO THE DEPARTMENT OR AGENCY WEBSITE.

18 Sec. 122. (1) "Contested case" means a contested case as
19 defined in section ~~3(3)~~ 3 but does not include a case that is
20 settled or a ~~case~~ in which a consent agreement is entered into or a
21 proceeding for establishing a rate or approving, disapproving, or
22 withdrawing approval of a form.

23 (2) "Costs and fees" means the normal costs incurred, after a
24 party has received notice of an initial hearing under section ~~71(2)~~
25 71, in being a party in a contested case under this act and include
26 all of the following:

27 (a) The reasonable and necessary expenses of expert witnesses

1 as determined by the presiding officer.

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

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

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

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

12 (b) The sole owner of an unincorporated business or any
13 partnership, corporation, association, or organization whose net
14 worth exceeded \$3,000,000.00 at the time the contested case was
15 initiated and ~~which~~**THAT** is not either exempt from taxation
16 pursuant to section 501(c)(3) of the internal revenue code, **26 USC**
17 **501**, or a cooperative association as defined in section 15(a) of
18 the agricultural marketing act, ~~12 U.S.C.~~**USC** 1141j(a).

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

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

27 (4) "Presiding officer" means an agency, 1 or more members of

1 the agency, a person designated by statute to conduct a contested
2 case, or a hearing officer designated and authorized by the agency
3 to conduct a contested case.

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

6 (a) In an action involving several remedies, or issues or
7 counts ~~which~~ **THAT** state different causes of actions or defenses,
8 the party prevailing as to each remedy, issue, or count.

9 (b) In an action involving only 1 issue or count stating only
10 1 cause of action or defense, the party prevailing on the entire
11 record.