

Act No. 288
Public Act of 1989
December 28, 1989
Filed by the Secretary of State
December 28, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Randall, Miller, Griffin, Leland, Rocca and Murphy

ENROLLED HOUSE BILL No. 5058

AN ACT to amend sections 7, 31, 41, 42, 43, 45, and 128 of Act No. 306 of the Public Acts of 1969, entitled as amended "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 the Michigan register; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to provide for declaratory judgments as to rules; and to repeal certain acts and parts of acts," section 7 as amended by Act No. 363 of the Public Acts of 1988, section 41 as amended by Act No. 413 of the Public Acts of 1982, section 42 as amended by Act No. 292 of the Public Acts of 1986, section 45 as amended by Act No. 13 of the Public Acts of 1987, and section 128 as added by Act No. 196 of the Public Acts of 1984, being sections 24.207, 24.231, 24.241, 24.242, 24.243, 24.245, and 24.328 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 7, 31, 41, 42, 43, 45, and 128 of Act No. 306 of the Public Acts of 1969, section 7 as amended by Act No. 363 of the Public Acts of 1988, section 41 as amended by Act No. 413 of the Public Acts of 1982, section 42 as amended by Act No. 292 of the Public Acts of 1986, section 45 as amended by Act No. 13 of the Public Acts of 1987, and section 128 as added by Act No. 196 of the Public Acts of 1984, being sections 24.207, 24.231, 24.241, 24.242, 24.243, 24.245, and 24.328 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 7. "Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission thereof, but does not include any of the following:

- (a) A resolution or order of the state administrative board.
- (b) A formal opinion of the attorney general.
- (c) A rule or order establishing or fixing rates or tariffs.

(d) A rule or order pertaining to game and fish and promulgated under Act No. 230 of the Public Acts of 1925, as amended, being sections 300.1 to 300.5 of the Michigan Compiled Laws, the Michigan sports fishing law, Act No. 165 of the Public Acts of 1929, as amended, being sections 301.1 to 306.3 of the Michigan Compiled Laws, and the wildlife conservation act, Act No. 256 of the Public Acts of 1988, being sections 300.251 to 300.270 of the Michigan Compiled Laws.

(e) A rule relating to the use of streets or highways, the substance of which is indicated to the public by means of signs or signals.

(f) A determination, decision, or order in a contested case.

(g) An intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.

(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.

(i) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.

(j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.

(k) Unless another statute requires a rule to be promulgated under this act, a rule or policy that only concerns the inmates of a state correctional facility and does not directly affect other members of the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections.

(l) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws:

(i) The designation, deletion, or revision of covered medical equipment and covered clinical services.

(ii) Certificate of need review standards.

(iii) Data reporting requirements and criteria for determining health facility viability.

(iv) Standards used by the department of public health in designating a regional certificate of need review agency.

(v) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of Act No. 368 of the Public Acts of 1978, being section 333.22210 of the Michigan Compiled Laws.

Sec. 31. (1) Rules which became effective before July 1, 1970 continue in effect until amended or rescinded.

(2) When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or rescinded, and the agency or successor agency may rescind any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically rescinded as of the effective date of the repeal of such law or the abolition of the agency.

(3) The rescission of a rule does not revive a rule which was previously rescinded.

(4) The amendment or rescission of a valid rule does not defeat or impair a right accrued, or affect a penalty incurred, under the rule.

(5) Except in the case of the amendment of rules concerning inmates as described in section 7(k), a rule may be amended or rescinded by another rule which constitutes the whole or a part of a filing of rules or as a result of an act of the legislature.

Sec. 41. (1) Before the adoption of a rule, an agency 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 shall transmit copies of the notice to each person who requested the agency in writing for advance notice of proposed action which may affect the person. The notice shall be by mail, in writing, 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 has 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) At a minimum, an agency shall publish the notice of public hearing as prescribed in any applicable statute, or if none, 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, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications.

(3) In addition to the requirements of subsection (1), the agency shall submit a copy of the notice to the legislative service bureau for publication in the Michigan register. An agency's notice shall be published in the Michigan register not less than 30 days and not more than 90 days before the public hearing.

Sec. 43. (1) Except in the case of an emergency rule promulgated in the manner described in section 48, a rule is not valid unless processed in compliance with section 42 and unless in substantial compliance with section 41(2), (3), (4), and (5).

(2) A proceeding to contest a rule on the ground of noncompliance with the requirements of sections 41 and 42 shall be commenced within 2 years after the effective date of the rule.

Sec. 45. (1) The legislative service bureau promptly shall approve a proposed rule if the legislative service bureau considers the proposed rule to be proper as to all matters of form, classification, arrangement, and numbering. The department of the attorney general promptly shall approve a proposed rule if that department considers the proposed rule to be legal.

(2) After publication of the proposed rule in the Michigan register and after notice is given as provided in this act and before the agency has formally adopted the rule, the agency shall transmit by letter to the committee copies of the rule bearing certificates of approval from the legislative service bureau and the department of the attorney general and copies of the rule without certificates. The agency transmittal shall be received by the committee not less than 2 years after the date of the last public hearing on the proposed rule, unless the proposed rule is a resubmission under subsection (11). The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the committee. The statement shall provide estimates of the impact of the proposed rules upon all of the following:

- (a) The revenues, expenditures, and paper work requirements of the agency proposing the rule.
- (b) The revenues and expenditures of any other state or local government agency affected by the proposed rule.
- (c) The taxpayers, consumers, industry or trade groups, small business, or other applicable groups affected by the proposed rule.

(3) Except as provided in section 40(4), if the regulatory impact statement discloses an impact on small businesses, the agency shall include with the letter of transmittal a small business economic impact statement in a form prescribed by the committee. A small business economic impact statement shall contain all of the following with respect to the proposed rules:

- (a) The nature of any reports and the estimated cost of their preparation by small businesses which would be required to comply with the proposed rules.
- (b) An analysis of the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.
- (c) The nature and estimated cost of any legal, consulting, and accounting services which small businesses would incur in complying with the proposed rules.
- (d) A statement regarding whether the proposed rules will have a disproportionate impact on small businesses because of the size of those businesses.
- (e) The ability of small businesses to absorb the costs estimated under subdivisions (a) to (c) without suffering economic harm and without adversely affecting competition in the marketplace.

(f) The cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by small businesses.

(g) The impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

(h) A statement regarding the manner in which the agency reduced the economic impact of the rule on small businesses as required under section 40, or a statement regarding the reasons such a reduction was not feasible.

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

(4) In order to obtain cost information for purposes of subsection (3), an agency may survey a representative sample of affected small businesses or trade associations or may adopt any other means considered appropriate by the agency.

(5) The agency shall transmit a copy of the small business economic impact statement to the director of commerce at the same time as required in subsection (3) for transmittal to the committee. The director of commerce shall review the statement and within 30 days after receipt shall notify the committee of any additional information pertinent to the committee's review.

(6) After its receipt of the agency's letter of transmittal, the committee shall have 2 months in which to consider the rule. If the committee by a majority vote determines that added time is needed to consider proposed rules, the committee may extend the time it has to consider a particular proposed rule by 1 month to a total of not longer than 3 months. This subsection and subsections (2) to (5) do not apply to an emergency rule.

(7) The committee shall furnish the senate fiscal agency and the house fiscal agency with 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 which, if 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 report their findings in writing to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.

(8) If the committee approves the proposed rule within the time period provided by subsection (6), the committee shall attach a certificate of its approval to all copies of the rule bearing certificates except 1 and transmit those copies to the agency.

(9) If, within the time period provided by subsection (6), the committee disapproves the proposed rule or the committee chairperson certifies an impasse after votes for approval and disapproval have failed to receive concurrent majorities, the committee shall immediately report that fact to the legislature and return the rule to the agency. The agency shall not adopt or promulgate the rule unless 1 of the following occurs:

(a) The legislature adopts a concurrent resolution approving the rule within 60 days after the committee report has been received by, and read into the respective journal of, each house.

(b) The committee subsequently approves the rule.

(10) If the time permitted by this section expires and the committee has not taken action under either subsection (8) or (9) then the committee shall return the proposed rules to the agency. The chairperson and alternate chairperson shall cause concurrent resolutions approving the rule to be introduced in both houses simultaneously. The concurrent resolutions shall be placed directly on the calendar of each house. The agency shall not adopt or promulgate the rule unless 1 of the following occurs:

(a) The legislature adopts a concurrent resolution approving the rule within 60 days after introduction by record roll call vote. The adoption of the concurrent resolution shall require a majority of the members elected to and serving in each house.

(b) The agency resubmits the proposed rule to the committee and the committee approves the rule within the time permitted by this section.

(11) An agency may withdraw a proposed rule by leave of the committee. An agency may resubmit a rule so withdrawn or returned under subsection (9) with changes following a committee meeting on the proposed rule or with minor modifications. A resubmitted rule is a new filing and subject to this section but is not subject to further notice and hearing as provided in sections 41 and 42.

(12) If the committee approves the proposed rule within the time period provided by subsection (6), or the legislature adopts a concurrent resolution approving the rule, the agency, if it wishes to proceed, shall formally adopt the rule, pursuant to any applicable statute, and make a written record of the adoption. Certificates of approval and adoption shall be attached to at least 6 copies of the rule.

Sec. 128. Sections 121 to 127 shall apply to contested cases commenced after September 30, 1984.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.