

# HOUSE BILL No. 5058

September 21, 1989, Introduced by Reps. Randall, Miller, Griffin, Leland, Rocca and Murphy and referred to the Committee on House Oversight.

A bill to amend sections 41, 42, 43, and 45 of Act No. 306 of the Public Acts of 1969, entitled as amended "Administrative procedures act of 1969," 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, and section 45 as amended by Act No. 13 of the Public Acts of 1987, being sections 24.241, 24.242, 24.243, and 24.245 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 41, 42, 43, and 45 of Act No. 306 of  
2 the Public Acts of 1969, section 41 as amended by Act No. 413 of  
3 the Public Acts of 1982, section 42 as amended by Act No. 292 of  
4 the Public Acts of 1986, and section 45 as amended by Act No. 13  
5 of the Public Acts of 1987, being sections 24.241, 24.242,

1 24.243, and 24.245 of the Michigan Compiled Laws, are amended to  
2 read as follows:

3       Sec. 41. (1) Before the adoption of a rule, an agency shall  
4 give notice of a public hearing and offer a person an opportunity  
5 to present data, views, QUESTIONS, and arguments. The notice  
6 shall be given within the time prescribed by any applicable stat-  
7 ute, or if none, ~~not less than 30 days nor more than 90 days~~  
8 ~~before the public hearing~~ IN THE MANNER PRESCRIBED IN  
9 SECTION 42(1).

10       (2) The notice DESCRIBED IN SUBSECTION (1) shall include all  
11 of the following:

12       (a) A reference to the statutory authority under which the  
13 action is proposed.

14       (b) The time and place of the public hearing and a statement  
15 of the manner in which data, views, QUESTIONS, and arguments may  
16 be submitted BY A PERSON to the agency at other times. ~~by a~~  
17 ~~person.~~

18       (c) A statement of the terms or substance of the proposed  
19 rule, a description of the subjects and issues involved, and the  
20 proposed effective date of the rule.

21       (3) ~~(2)~~ The agency shall transmit copies of the notice to  
22 ~~the joint committee on administrative rules, the legislative~~  
23 ~~service bureau, the office of the governor, and~~ each person who  
24 requested the agency in writing for advance notice of proposed  
25 action which may affect the person. The notice shall be by mail,  
26 in writing, to the last address specified by the person. ~~A~~  
27 ~~request for notice shall be renewed each December.~~

1 (4) ~~(3)~~ The public hearing shall comply with any  
2 applicable statute but is not subject to the provisions ~~of this~~  
3 ~~act~~ governing A contested ~~cases~~ CASE.

4 (5) ~~(4)~~ The head of the promulgating agency or 1 or more  
5 persons designated by the head of the agency, who has knowledge  
6 of the subject matter of the proposed rule, shall be present at  
7 the public hearing and shall participate in the discussion of the  
8 proposed rule.

9 Sec. 42. (1) ~~The~~ AT A MINIMUM, AN agency shall publish  
10 the notice of public hearing as prescribed in any applicable  
11 statute, or if none, ~~in a manner selected by the agency as best~~  
12 ~~calculated to give notice to persons likely to be affected by the~~  
13 ~~proposed rule. Methods~~ THE AGENCY SHALL PUBLISH THE NOTICE NOT  
14 LESS THAN 10 DAYS OR NOT MORE THAN 60 DAYS BEFORE THE DATE OF THE  
15 PUBLIC HEARING IN AT LEAST 3 NEWSPAPERS OF GENERAL CIRCULATION IN  
16 DIFFERENT PARTS OF THE STATE, 1 OF WHICH SHALL BE IN THE UPPER  
17 PENINSULA.

18 (2) ADDITIONAL METHODS that may be employed by the agency,  
19 depending upon the circumstances, include publication ~~of the~~  
20 ~~notice in 1 or more newspapers of general circulation or, if~~  
21 ~~appropriate,~~ in trade, industry, governmental, or professional  
22 publications. ~~If the persons likely to be affected by the pro-~~  
23 ~~posed rule are unorganized or diffuse in character and location,~~  
24 ~~the agency shall publish the notice as a display advertisement in~~  
25 ~~at least 3 newspapers of general circulation in different parts~~  
26 ~~of the state, 1 of which shall be published in the Upper~~  
27 ~~Peninsula.~~

1       (3) ~~(2)~~ In addition to the requirements of subsection (1),  
2 the agency shall submit a copy of the notice to the legislative  
3 service bureau ~~pursuant to section 41~~ for publication in the  
4 Michigan register. An agency's notice shall be published in the  
5 Michigan register not less than 30 days ~~nor~~ OR NOT more than 90  
6 days before the public hearing.

7       Sec. 43. (1) ~~A rule hereafter promulgated~~ EXCEPT IN THE  
8 CASE OF AN EMERGENCY RULE PROMULGATED IN THE MANNER DESCRIBED IN  
9 SECTION 48, A RULE is not valid unless processed in COMPLIANCE  
10 WITH SECTION 42 AND UNLESS IN substantial compliance with  
11 SECTION 41(2), (3), (4), AND (5). ~~sections 41 and 42. However,~~  
12 ~~inadvertent failure to give the notice to any person as required~~  
13 ~~by section 41 does not invalidate a rule processed thereunder.~~

14       (2) A proceeding to contest a rule on the ground of noncom-  
15 pliance with the ~~procedural~~ requirements of sections 41 and 42  
16 shall be commenced within 2 years after the effective date of the  
17 rule.

18       Sec. 45. (1) The legislative service bureau promptly shall  
19 approve a proposed rule if the LEGISLATIVE SERVICE bureau consid-  
20 ers the proposed rule to be proper as to all matters of form,  
21 classification, arrangement, and numbering. The department of  
22 the attorney general promptly shall approve a proposed rule if  
23 ~~the~~ THAT department considers the proposed rule to be legal.

24       (2) After ~~the legislative service bureau and attorney gen-~~  
25 ~~eral have approved a proposed rule, and after~~ publication of the  
26 proposed rule in the Michigan register AND AFTER NOTICE IS GIVEN  
27 as provided in this act ~~, but within 2 years after the date of~~

1 ~~the last public hearing on the proposed rule, unless the proposed~~  
2 ~~rule is a resubmission under subsection (11),~~ and before the  
3 agency has formally adopted the rule, the agency shall transmit  
4 by letter TO THE COMMITTEE copies of the rule bearing certifi-  
5 cates of approval FROM THE LEGISLATIVE SERVICE BUREAU AND THE  
6 DEPARTMENT OF THE ATTORNEY GENERAL and copies of the rule without  
7 certificates. ~~to the committee.~~ THE AGENCY TRANSMITTAL SHALL  
8 BE RECEIVED BY THE COMMITTEE NOT LESS THAN 2 YEARS AFTER THE DATE  
9 OF THE LAST PUBLIC HEARING ON THE PROPOSED RULE, UNLESS THE PRO-  
10 POSED RULE IS A RESUBMISSION UNDER SUBSECTION (11). The agency  
11 shall include with the letter of transmittal a regulatory impact  
12 statement on a 1-page form provided by the committee. The state-  
13 ment shall provide estimates of the impact of the proposed rules  
14 upon all of the following:

15 (a) The revenues, expenditures, and paper work requirements  
16 of the agency proposing the rule.

17 (b) The revenues and expenditures of any other state or  
18 local government agency affected by the proposed rule.

19 (c) The taxpayers, consumers, industry or trade groups,  
20 small business, or other applicable groups affected by the pro-  
21 posed rule.

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

1 (a) The nature of any reports and the estimated cost of  
2 their preparation by small businesses which would be required to  
3 comply with the proposed rules.

4 (b) An analysis of the costs of compliance for all small  
5 businesses affected by the proposed rules, including costs of  
6 equipment, supplies, labor, and increased administrative costs.

7 (c) The nature and estimated cost of any legal, consulting,  
8 and accounting services which small businesses would incur in  
9 complying with the proposed rules.

10 (d) A statement regarding whether the proposed rules will  
11 have a disproportionate impact on small businesses because of the  
12 size of those businesses.

13 (e) The ability of small businesses to absorb the costs  
14 estimated under subdivisions (a) to (c) without suffering eco-  
15 nomic harm and without adversely affecting competition in the  
16 marketplace.

17 (f) The cost, if any, to the agency of administering or  
18 enforcing a rule which exempts or sets lesser standards for com-  
19 pliance by small businesses.

20 (g) The impact on the public interest of exempting or set-  
21 ting lesser standards of compliance for small businesses.

22 (h) A statement regarding ~~how~~ the MANNER IN WHICH THE  
23 agency reduced the economic impact of the rule on small busi-  
24 nesses as required under section 40, or a statement regarding  
25 ~~why~~ THE REASONS such A reduction was not feasible.

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

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

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

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

19 (7) The committee shall furnish the senate fiscal agency and  
20 the house fiscal agency with a copy of each rule and regulatory  
21 impact statement filed with the committee, as well as a copy of  
22 the agenda identifying the proposed rules to be considered by the  
23 committee. ~~If requested by the committee, the~~ THE senate  
24 fiscal agency and the house fiscal agency shall analyze each pro-  
25 posed rule for possible fiscal implications which, if adopted,  
26 would result in additional appropriations in the current fiscal  
27 year ~~—~~ or commit the legislature to an appropriation in a

1 future fiscal year. ~~and~~ THE SENATE FISCAL AGENCY AND THE  
2 HOUSE FISCAL AGENCY SHALL report their findings in writing ~~and~~ to  
3 the senate and house appropriations committees and TO the commit-  
4 tee before the date of consideration of the proposed rule by the  
5 committee.

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

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

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

22 (b) The committee subsequently approves the rule.

23 (10) If the time permitted by this section expires and the  
24 committee has not taken action under either subsection (8) or (9)  
25 then the committee shall return the proposed rules to the  
26 agency. The chairperson and alternate chairperson shall cause  
27 concurrent resolutions approving the rule to be introduced in



1 both houses simultaneously. The concurrent resolutions shall be  
2 placed directly on the calendar of each house. The agency shall  
3 not adopt or promulgate the rule unless 1 of the following  
4 occurs:

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

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

12 (11) An agency may withdraw a proposed rule by leave of the  
13 committee. An agency may resubmit a rule so withdrawn or  
14 returned under subsection (9) with ~~minor modification or with~~  
15 ~~changes suggested by the committee~~ CHANGES following a committee  
16 meeting on the proposed rule OR WITH MINOR MODIFICATIONS. A  
17 resubmitted rule is a new filing and subject to this section but  
18 is not subject to further notice and hearing as provided in sec-  
19 tions 41 and 42.

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