

# HOUSE BILL No. 5799

February 9, 2010, Introduced by Reps. McDowell, Kennedy, Mayes and Barnett and referred to the Committee on Judiciary.

A bill to amend 1969 PA 306, entitled  
"Administrative procedures act of 1969,"  
by amending sections 40, 44, 45, and 45a (MCL 24.240, 24.244,  
24.245, and 24.245a), section 40 as amended by 1999 PA 262, section  
44 as amended by 2004 PA 23, and sections 45 and 45a as amended by  
2004 PA 491.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 40. (1) When an agency proposes to adopt a rule that will  
2       apply to a small business and the rule will have a disproportionate  
3       impact on small businesses because of the size of those businesses,  
4       the agency proposing to adopt the rule shall reduce the economic  
5       impact of the rule on small businesses by doing 1 or more of the

1 following when it is lawful and feasible in meeting the objectives  
2 of the act authorizing the promulgation of the rule:

3 (a) Establish differing compliance or reporting requirements  
4 or timetables for small businesses under the rule.

5 (b) Consolidate or simplify the compliance and reporting  
6 requirements for small businesses under the rule.

7 (c) Establish performance rather than design standards, when  
8 appropriate.

9 (d) Exempt small businesses from any or all of the  
10 requirements of the rule.

11 (2) If appropriate in reducing the disproportionate economic  
12 impact on small business of a rule as provided in subsection (1),  
13 an agency may use the following classifications of small business:

14 (a) 0-9 full-time employees.

15 (b) 10-49 full-time employees.

16 (c) 50-249 full-time employees.

17 (3) For purposes of subsection (2), an agency may include a  
18 small business with a greater number of full-time employees in a  
19 classification that applies to a business with fewer full-time  
20 employees.

21 (4) This section and section ~~45(3)~~**45(4)** do not apply to a  
22 rule which is required by federal law and which an agency  
23 promulgates without imposing standards more stringent than those  
24 required by the federal law.

25 Sec. 44. (1) Sections 41 and 42 do not apply to an amendment  
26 or rescission of a rule that is obsolete or superseded, or that is  
27 required to make obviously needed corrections to make the rule

1 conform to an amended or new statute or to accomplish any other  
2 solely formal purpose, if a statement to that effect is included in  
3 the legislative service bureau certificate of approval of the rule.

4 (2) Sections 41 and 42 do not apply to a rule that is  
5 promulgated under the Michigan occupational safety and health act,  
6 1974 PA 154, MCL 408.1001 to 408.1094, that is substantially  
7 similar to an existing federal standard that has been adopted or  
8 promulgated under the occupational safety and health act of 1970,  
9 Public Law 91-596, 84 Stat. 1590. However, notice of the proposed  
10 rule shall be published in the Michigan register at least 35 days  
11 before the submission of the rule to the secretary of state  
12 pursuant to section 46(1). A reasonable period, not to exceed 21  
13 days, shall be provided for the submission of written or electronic  
14 comments and views following publication in the Michigan register.

15 (3) For purposes of subsection (2), "substantially similar"  
16 means identical, with the exception of style or format differences  
17 needed to conform to this or other state laws. ~~as determined by~~  
18 ~~the office of regulatory reform pursuant to section 45(1).~~

19 Sec. 45. (1) Except as otherwise provided for in this  
20 subsection, the agency shall submit the proposed rule to the  
21 legislative service bureau for its formal certification. The  
22 submission to the legislative service bureau for formal  
23 certification shall be in the form of electronic transmission. If  
24 requested by the legislative service bureau, the **STATE** office of  
25 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall also  
26 transmit up to 4 paper copies of the proposed rule. The legislative  
27 service bureau shall promptly issue a certificate of approval

1 indicating a determination that a proposed rule is proper as to all  
2 matters of form, classification, and arrangement. If the  
3 legislative service bureau fails to issue a certificate of approval  
4 within 21 calendar days after receipt of the submission for formal  
5 certification, the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**  
6 **HEARINGS AND RULES** may issue a certificate of approval. If the  
7 submission to the legislative service bureau is returned by the  
8 legislative service bureau to the agency before the expiration of  
9 the 21-calendar-day time period, the 21-calendar-day time period is  
10 tolled until the rule is resubmitted by the agency. The remainder  
11 of the 21-calendar-day time period or 6 calendar days, whichever is  
12 longer, shall be available for consideration by the legislative  
13 service bureau for formal certification of the rule. The **STATE**  
14 office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** may  
15 approve a proposed rule if it considers the proposed rule to be  
16 legal.

17       (2) **THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**  
18 **SHALL ISSUE A REPORT DESCRIBING WHETHER ANY PROVISIONS OF THE**  
19 **PROPOSED RULE ARE IN COMPLIANCE WITH SECTION 29 OF ARTICLE IX OF**  
20 **THE STATE CONSTITUTION OF 1963 AND IMPLEMENTING LEGISLATION AND, AS**  
21 **PART OF THE REPORT, SHALL SPECIFICALLY CERTIFY WHETHER THE PROPOSED**  
22 **RULE REQUIRES LOCAL UNITS OF GOVERNMENT TO PROVIDE EITHER NEW**  
23 **ACTIVITIES OR SERVICES OR AN INCREASE IN THE LEVEL OF ANY ACTIVITY**  
24 **OR SERVICE BEYOND THAT REQUIRED BY EXISTING LAW. IF THE**  
25 **CERTIFICATION INDICATES THAT THE PROPOSED RULE REQUIRES LOCAL UNITS**  
26 **OF GOVERNMENT TO PROVIDE EITHER NEW ACTIVITIES OR SERVICES OR AN**  
27 **INCREASE IN THE LEVEL OF ANY ACTIVITY OR SERVICE BEYOND THAT**

1 REQUIRED BY EXISTING LAW, THEN THE REPORT SHALL DESCRIBE WHETHER A  
 2 FISCAL NOTE HAS BEEN PREPARED REGARDING THE NEW ACTIVITY OR SERVICE  
 3 OR INCREASE IN THE LEVEL OF ANY ACTIVITY OR SERVICE BEYOND THAT  
 4 REQUIRED BY EXISTING LAW AND WHETHER AN APPROPRIATION COMPENSATING  
 5 THE LOCAL UNITS OF GOVERNMENT FOR THE ACTIVITY OR SERVICE HAS BEEN  
 6 MADE BY THE LEGISLATURE AND ENACTED INTO LAW. IF THE CERTIFICATION  
 7 INDICATES NONCOMPLIANCE WITH SECTION 29 OF ARTICLE IX OF THE STATE  
 8 CONSTITUTION OF 1963 AND IMPLEMENTING LEGISLATION, THE STATE OFFICE  
 9 OF ADMINISTRATIVE HEARINGS AND RULES SHALL NOT TRANSMIT THE  
 10 PROPOSED RULE TO THE COMMITTEE.

11 (3) ~~(2)~~—Except as provided in subsection ~~(6)~~—(7), after notice  
 12 is given as provided in this act and before the agency proposing  
 13 the rule has formally adopted the rule, the agency shall prepare an  
 14 agency report containing a synopsis of the comments contained in  
 15 the public hearing record and a copy of the regulatory impact  
 16 statement required under subsection ~~(3)~~—(4). In the report, the  
 17 agency shall describe any changes in the proposed rules that were  
 18 made by the agency after the public hearing. The **STATE** office of  
 19 ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES** shall transmit  
 20 by notice of transmittal to the committee copies of the rule, the  
 21 agency reports, a copy of the regulatory impact statement, and  
 22 certificates of approval from the legislative service bureau and  
 23 the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND**  
 24 **RULES**. The **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**  
 25 **HEARINGS AND RULES** shall also electronically submit a copy of the  
 26 rule, any agency reports required under this subsection, any  
 27 regulatory impact statements required under subsection ~~(3)~~—(4), and

1 any certificates of approval required under ~~subsection (1)~~  
2 **SUBSECTIONS (1) AND (2)** to the committee. The agency shall  
3 electronically transmit to the committee the records described in  
4 this subsection within 1 year after the date of the last public  
5 hearing on the proposed rule unless the proposed rule is a  
6 resubmission under section 45a(7).

7 (4) ~~(3)~~ Except for a rule promulgated under sections 33, 44,  
8 and 48, the agency shall prepare and include with the notice of  
9 transmittal a regulatory impact statement containing all of the  
10 following information:

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

14 (b) An identification of the behavior and frequency of  
15 behavior that the rule is designed to alter.

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

19 (d) An estimate of the change in the frequency of the targeted  
20 behavior expected from the rule.

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

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

27 (g) A discussion of the feasibility of establishing a

1 regulatory program similar to that proposed in the rule that would  
2 operate through market-based mechanisms.

3 (h) An estimate of the cost of rule imposition on the agency  
4 promulgating the rule.

5 (i) An estimate of the actual statewide compliance costs of  
6 the proposed rule on individuals **AND LOCAL UNITS OF GOVERNMENT**.

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

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

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

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

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

20 (o) An estimate of the ability of small businesses **AND LOCAL**  
21 **UNITS OF GOVERNMENT** to absorb the costs estimated under  
22 subdivisions (l) through (n) without suffering economic harm and  
23 without adversely affecting competition in the marketplace.

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

27 (q) An identification of the impact on the public interest of

1 exempting or setting lesser standards of compliance for small  
2 businesses.

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

6 (s) A statement describing whether and how the agency has  
7 involved small businesses **AND LOCAL UNITS OF GOVERNMENT** in the  
8 development of the rule.

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

11 (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 (v) An estimate of any increase in revenues to state or local  
15 governmental units as a result of the rule **AND FACTS DEMONSTRATING**  
16 **COMPLIANCE WITH SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION**  
17 **OF 1963 AND IMPLEMENTING LEGISLATION.**

18 (w) An estimate of any secondary or indirect benefits of the  
19 rule.

20 (x) An identification of the sources the agency relied upon in  
21 compiling the regulatory impact statement.

22 (y) Any other information required by the office of regulatory  
23 reform.

24 **(5)** ~~(4)~~—The agency shall electronically transmit the  
25 regulatory impact statement required under subsection ~~(3)~~ **(4)** to  
26 the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND**  
27 **RULES** at least 28 days before the public hearing required pursuant



1 to section 42. Before the public hearing can be held, the  
 2 regulatory impact statement must be reviewed and approved by the  
 3 **STATE** office of ~~regulatory reform~~**ADMINISTRATIVE HEARINGS AND**  
 4 **RULES**. The agency shall also electronically transmit a copy of the  
 5 regulatory impact statement to the committee before the public  
 6 hearing and the agency shall make copies available to the public at  
 7 the public hearing.

8 (6) ~~(5)~~—The committee shall electronically transmit to the  
 9 senate fiscal agency and the house fiscal agency a copy of each  
 10 rule and regulatory impact statement filed with the committee, as  
 11 well as a copy of the agenda identifying the proposed rules to be  
 12 considered by the committee. The senate fiscal agency and the house  
 13 fiscal agency shall analyze each proposed rule for possible fiscal  
 14 implications that, if the rule were adopted, would result in  
 15 additional appropriations in the current fiscal year or commit the  
 16 legislature to an appropriation in a future fiscal year. The senate  
 17 fiscal agency and the house fiscal agency shall electronically  
 18 report their findings to the senate and house appropriations  
 19 committees and to the committee before the date of consideration of  
 20 the proposed rule by the committee.

21 (7) ~~(6)~~—Subsections ~~(2)~~, ~~(3)~~, and ~~(4)~~, **AND (5)** do not apply to  
 22 a rule that is promulgated under sections 33, 44, and 48.

23 Sec. 45a. (1) **THE COMMITTEE SHALL REJECT THE NOTICE OF**  
 24 **TRANSMITTAL, REFUSE THE RECEIPT OF A PROPOSED RULE, AND RETURN A**  
 25 **PROPOSED RULE TO THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND**  
 26 **RULES IF THE PROPOSED RULE IS NOT CERTIFIED TO BE IN COMPLIANCE**  
 27 **WITH SECTION 29 OF ARTICLE IX OF THE STATE CONSTITUTION OF 1963 AND**

1 IMPLEMENTING LEGISLATION, AS FURTHER DESCRIBED IN SECTION 45(1) AND  
2 (2). THE REJECTION OF THE NOTICE OF TRANSMITTAL BY THE COMMITTEE  
3 STAYS THE ABILITY OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS  
4 AND RULES TO PROCEED WITH THE PROCESSING OF THE RULE, UNTIL SUCH  
5 TIME AS THE COMPLIANCE WITH SECTION 29 OF ARTICLE IX OF THE STATE  
6 CONSTITUTION OF 1963 AND IMPLEMENTING LEGISLATION IS DEMONSTRATED.

7 Except as otherwise provided for in subsections (7) and (8), after  
8 receipt **AND ACCEPTANCE, AS APPLICABLE**, by the committee of the  
9 notice of transmittal specified in section ~~45(2)~~, **45(3)**, the

10 committee has 15 session days in which to consider the rule and to  
11 object to the rule by filing a notice of objection approved by a  
12 concurrent majority of the committee members or the committee may,  
13 by concurrent majority, waive the remaining session days. If the  
14 committee waives the remaining session days, the clerk of the  
15 committee shall promptly notify the **STATE** office of ~~regulatory~~  
16 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES** of the waiver by  
17 electronic transmission. A notice of objection may only be approved  
18 by the committee if the committee affirmatively determines by a  
19 concurrent majority that 1 or more of the following conditions  
20 exist:

21 (a) The agency lacks statutory authority for the rule.

22 (b) The agency is exceeding the statutory scope of its rule-  
23 making authority.

24 (c) There exists an emergency relating to the public health,  
25 safety, and welfare that would warrant disapproval of the rule.

26 (d) The rule is in conflict with state law.

27 (e) A substantial change in circumstances has occurred since

1 enactment of the law upon which the proposed rule is based.

2 (f) The rule is arbitrary or capricious.

3 (g) The rule is unduly burdensome to the public or to a  
4 licensee licensed by the rule.

5 (2) If the committee does not file a notice of objection  
6 within the time period prescribed in subsection (1) or if the  
7 committee waives the remaining session days by concurrent majority,  
8 the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND**  
9 **RULES** may immediately file the rule, with the certificate of  
10 approval required under section 45(1) **AND (2)**, with the secretary  
11 of state. The rule shall take effect immediately upon its filing  
12 unless a later date is indicated within the rule.

13 (3) If the committee files a notice of objection within the  
14 time period prescribed in subsection (1), the committee chair, the  
15 alternate chair, or any member of the committee shall cause bills  
16 to be introduced in both houses of the legislature simultaneously.  
17 Each house shall place the bill or bills directly on its calendar.  
18 The bills shall contain 1 or more of the following:

19 (a) A rescission of a rule upon its effective date.

20 (b) A repeal of the statutory provision under which the rule  
21 was authorized.

22 (c) A bill staying the effective date of the proposed rule for  
23 up to 1 year.

24 (4) The notice of objection filed under subsection (3) stays  
25 the ability of the **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE**  
26 **HEARINGS AND RULES** to file the rule with the secretary of state  
27 until the earlier of the following:

1 (a) Fifteen session days after the notice of objection is  
2 filed under subsection (3).

3 (b) The date of the rescission of the issuance of the notice  
4 of objection, approved by a concurrent majority of the committee  
5 members. The committee may meet to rescind the issuance of the  
6 notice of objection under this subdivision. If the committee  
7 rescinds the issuance of a notice of objection under this  
8 subdivision, ~~the clerk of the~~ committee shall promptly notify the  
9 **STATE** office of ~~regulatory reform~~ **ADMINISTRATIVE HEARINGS AND RULES**  
10 by electronic transmission of the ~~rescission~~ **RESCISSION**.

11 (5) If the legislation introduced pursuant to subsection (3)  
12 is defeated in either house and if the vote by which the  
13 legislation failed to pass is not reconsidered in compliance with  
14 the rules of that house, or if legislation introduced pursuant to  
15 subsection (3) is not adopted by both houses within the time period  
16 specified in subsection (4), the **STATE** office of ~~regulatory reform~~  
17 **ADMINISTRATIVE HEARINGS AND RULES** may file the rule with the  
18 secretary of state. The rule shall take effect immediately upon  
19 filing with the secretary of state unless a later date is specified  
20 within the rule.

21 (6) If the legislation introduced pursuant to subsection (3)  
22 is enacted by the legislature and presented to the governor within  
23 the 15-session-day period, the rules do not become effective unless  
24 the legislation is vetoed by the governor as provided by law. If  
25 the governor vetoes the legislation, the **STATE** office of ~~regulatory~~  
26 ~~reform~~ **ADMINISTRATIVE HEARINGS AND RULES** may file the rules  
27 immediately. The rule shall take effect 7 days after the date of

1 its filing unless a later effective date is indicated within the  
2 rule.

3 (7) An agency may withdraw a proposed rule under the following  
4 conditions:

5 (a) With permission of the committee chair and alternate  
6 chair, the agency may withdraw the rule and resubmit it. If  
7 permission to withdraw is granted, the 15-session-day time period  
8 described in subsection (1) is tolled until the rule is  
9 resubmitted, except that the committee shall have at least 6  
10 session days after resubmission to consider the resubmitted rule.

11 (b) Without permission of the committee chair and alternate  
12 chair, the agency may withdraw the rule and resubmit it. If  
13 permission to withdraw is not granted, a new and untolled 15-  
14 session-day time period described in subsection (1) shall begin  
15 upon resubmission of the rule to the committee for consideration.

16 (8) Subsections (1) ~~through~~ **TO** (5) do not apply to rules  
17 adopted under sections 33, 44, and 48.

18 (9) As used in this section only, "session day" means each day  
19 in which both the house of representatives and the senate convene  
20 in session.

21 Enacting section 1. This amendatory act does not take effect  
22 unless Senate Bill No. \_\_\_\_ or House Bill No. 5802(request no.  
23 05809'10) of the 95th Legislature is enacted into law.