

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 272

A bill to amend 1969 PA 306, entitled  
"Administrative procedures act of 1969,"  
by amending sections 40 and 64 (MCL 24.240 and 24.264), section 40  
as amended by 1999 PA 262.

**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 **SHALL CONSIDER EXEMPTING SMALL BUSINESSES AND, IF NOT**  
5 **EXEMPTED, THE AGENCY** proposing to adopt the rule shall reduce the  
6 economic impact of the rule on small businesses by doing ~~1 or more~~  
7 **ALL** of the following when it is lawful and feasible in meeting the  
8 objectives of the act authorizing the promulgation of the rule:

9           **(A) IDENTIFY AND ESTIMATE THE NUMBER OF SMALL BUSINESSES**

1 **AFFECTED BY THE PROPOSED RULE AND ITS PROBABLE EFFECT ON SMALL**  
2 **BUSINESSES.**

3 (B) ~~(a)~~—Establish differing compliance or reporting  
4 requirements or timetables for small businesses under the rule  
5 **AFTER PROJECTING THE REQUIRED REPORTING, RECORD-KEEPING, AND OTHER**  
6 **ADMINISTRATIVE COSTS.**

7 (C) ~~(b)~~—Consolidate, ~~or~~ simplify, **OR ELIMINATE** the compliance  
8 and reporting requirements for small businesses under the rule **AND**  
9 **IDENTIFY THE SKILLS NECESSARY TO COMPLY WITH THE REPORTING**  
10 **REQUIREMENTS.**

11 (D) ~~(c)~~—Establish performance ~~rather than design standards,~~  
12 ~~when appropriate~~ **STANDARDS TO REPLACE DESIGN OR OPERATIONAL**  
13 **STANDARDS REQUIRED IN THE PROPOSED RULE.**

14 ~~——(d) Exempt small businesses from any or all of the~~  
15 ~~requirements of the rule.~~

16 (2) **THE FACTORS DESCRIBED IN SUBSECTION (1) (A) TO (D) SHALL BE**  
17 **SPECIFICALLY ADDRESSED IN THE SMALL BUSINESS IMPACT STATEMENT.**

18 (3) ~~(2)~~ ~~If appropriate in~~ **IN** reducing the disproportionate  
19 economic impact on small business of a rule as provided in  
20 subsection (1), an agency ~~may~~ **SHALL** use the following  
21 classifications of small business:

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

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

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

25 (4) ~~(3)~~—For purposes of subsection ~~(2)~~ **(3)**, an agency may  
26 include a small business with a greater number of full-time  
27 employees in a classification that applies to a business with fewer

1 full-time employees.

2 (5) ~~(4)~~—This section and section 45(3) do not apply to a rule  
3 ~~which~~**THAT** is required by federal law and ~~which~~**THAT** an agency  
4 promulgates without imposing standards more stringent than those  
5 required by the federal law.

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