ADMINISTRATIVE PROCEDURES ACT OF 1969
Act 306 of 1969

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 certain publications; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to create and establish certain committees and offices; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1993, Act 7, Imd. Eff. Mar. 18, 1993;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

The People of the State of Michigan enact:

CHAPTER 1
GENERAL PROVISIONS

24.201 Administrative procedures; short title.

Sec. 1. This act shall be known and may be cited as the “administrative procedures act of 1969”.

History: 1969, Act 306, Eff. July 1, 1970.

Compiler's note: For transfer of powers and duties of office of regulatory reform from the executive office of the governor to the department of management and budget, see E.R.O. No. 2002-7, compiled at MCL 10.153 of the Michigan Compiled Laws.

Popular name: Act 306

Popular name: APA

24.203 Definitions; A to G.

Sec. 3. (1) "Adoption of a rule" means that step in the processing of a rule consisting of the formal action of an agency establishing a rule before its promulgation.

(2) "Agency" means a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action. Agency does not include an agency in the legislative or judicial branch of state government, the governor, an agency having direct governing control over an institution of higher education, the state civil service commission, or an association of insurers created under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or other association or facility formed under that act as a nonprofit organization of insurer members.

(3) "Contested case" means a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are considered a continuous proceeding as though before a single agency.

(4) "Committee" means the joint committee on administrative rules.

(5) "Court" means the circuit court.

(6) "Decision record" means, in regard to a request for rule-making where an agency receives recommendations or comments by an advisory committee or other advisory entity created by statute, both of the following:

(a) The minutes of all meetings related to the request for rule-making.

(b) The votes of members.

(7) "Guideline" means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law, and that binds the agency but does not bind any other person.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1988, Act 277, Imd. Eff. July 27, 1988;—Am. 2011, Act 239, Imd. Eff. Dec. 1, 2011.

Compiler's note: Section 2 of Act 277 of 1988 provides:

“The amendment to section 3 of Act No. 306 of the Public Acts of 1969, being section 24.203 of the Michigan Compiled Laws, pursuant to this amendatory act is intended to codify, approve, and validate the actions and long-standing practices taken by the associations and facilities mentioned in this amendatory act retroactively to the time of their original creation. It is the intent of this amendatory act to rectify the misconstruction of the applicability of the administrative procedures act of 1969 by the court of appeals in League General Insurance Company v Catastrophic Claims Association, Case No. 93744, December 21, 1987, with respect to the imposition of rule promulgation requirements on the catastrophic claims association as a state agency, and to further assure that the

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associations and facilities mentioned in this amendatory act, and their respective boards of directors, shall not hereafter be treated as a state agency."

Popular name: Act 306

Popular name: APA

24.205 Definitions; L to R.

Sec. 5. (1) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes, or a license or registration issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(2) "Licensing" includes agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.

(3) "Michigan register" means the publication described in section 8.

(4) "Notice" means a written or electronic record that informs a person of past or future action of the person generating the record.

(5) "Notice of objection" means the record adopted by the committee that indicates the committee's formal objection to a proposed rule.

(6) "Party" means a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case. In a contested case regarding an application for a license, party includes the applicant for that license.

(7) "Person" means an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling, or contested case.

(8) "Processing of a rule" means the action required or authorized by this act regarding a rule that is to be promulgated, including the rule's adoption, and ending with the rule's promulgation.

(9) "Promulgation of a rule" means that step in the processing of a rule consisting of the filing of a rule with the secretary of state.

(10) "Record" means information that is inscribed on a paper or electronic medium.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2006, Act 460, Imd. Eff. Dec. 20, 2006.

Compiler's note: Enacting section 1 of Act 460 of 2006 provides:

"Enacting section 1. Section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205, as amended by this amendatory act, is curative and intended to express the original intent of the legislature regarding the application of section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205, as amended by 2004 PA 23."

Popular name: Act 306

Popular name: APA

24.207 "Rule" defined.

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 of the law enforced or administered by the agency. Rule 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 parts 401, 411, and 487 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.40101 to 324.40120, 324.41101 to 324.41105, and 324.48701 to 324.48740.

(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.

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(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, is a rule and remains 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*) A rule establishing special local watercraft controls promulgated under former 1967 PA 303. A rule described in this subdivision may be rescinded as provided in section 80113(2) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80113.

(m) All of the following, after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215, or the statewide health coordinating council under former section 22217 of the public health code, 1978 PA 368:

(*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 community health in designating a regional certificate of need review agency.

(*v*) The modification of the 100 licensed bed limitation for extended care services programs set forth in section 22210 of the public health code, 1978 PA 368, MCL 333.22210.

(n) A policy developed by the family independence agency under section 6(3) of the social welfare act, 1939 PA 280, MCL 400.6, setting income and asset limits, types of income and assets to be considered for eligibility, and payment standards for administration of assistance programs under that act.

(o) A policy developed by the family independence agency under section 6(4) of the social welfare act, 1939 PA 280, MCL 400.6, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds.

(p) The provisions of an agency's contract with a public or private entity including, but not limited to, the provisions of an agency's standard form contract.

(q) A policy developed by the department of community health under the authority granted in section 111a of the social welfare act, 1939 PA 280, MCL 400.111a, to implement policies and procedures necessary to operate its health care programs in accordance with an approved state plan or in compliance with state statute.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1986, Act 243, Imd. Eff. Dec. 4, 1986;—Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988;—Am. 1988, Act 363, Imd. Eff. Dec. 16, 1988;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989;—Am. 1995, Act 224, Eff. Mar. 28, 1996;—Am. 1996, Act 489, Eff. Mar. 31, 1997;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2000, Act 216, Imd. Eff. June 27, 2000;—Am. 2011, Act 52, Imd. Eff. June 8, 2011.

Administrative rules: R 791.1101 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

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24.207a "Small business" defined.

Sec. 7a. "Small business" means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than $6,000,000.00.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.

Sec. 8. (1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

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(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

History: Add. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1984, Act 273, Eff. Mar. 29, 1985;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.211 Construction of act.

Sec. 11. This act shall not be construed to repeal additional requirements imposed by law.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

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CHAPTER 2
GUIDELINES

24.221-24.223 Repealed. 1976, Act 442, Eff. Apr. 13, 1977.

Compiler's note: The repealed sections pertained to public inspection of certain documents.

Popular name: Act 306

Popular name: APA

24.224 Adoption of guideline; notice.

Sec. 24. (1) Before the adoption of a guideline, an agency shall give electronic notice of the proposed guideline to the committee, the office of regulatory reform, and each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. The committee shall electronically provide the notice of the proposed guideline not later than the next business day after receipt of the notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed guideline. The notice shall be given by mail, in writing, or electronically transmitted to the last address specified by the person requesting the agency for advanced notice of proposed action that may affect that person. A request for notice is renewable each December. Any notice under this section to any member or agency of the legislative and executive branches shall be given electronically.

(2) The notice required by subsection (1) shall include all of the following:

(a) A statement of the terms or substance of the proposed guideline, a description of the subjects and issues involved, and the proposed effective date of the guideline.

(b) A statement that the addressee may express any views or arguments regarding the proposed guideline or the guideline's effect on a person.

(c) The address to which written comments may be sent and the date by which comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision about which the proposed guideline states a policy.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—

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Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.225 Guidelines as public record; distribution of copies.

Sec. 25. When adopted, a guideline is a public record. Copies of guidelines shall be sent to the committee, the office of regulatory reform, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.226 Adoption of guidelines in lieu of rules prohibited.

Sec. 26. An agency shall not adopt a guideline in lieu of a rule.

History: Add. 1977, Act 108, Eff. Jan. 1, 1978.

Popular name: Act 306

Popular name: APA

24.227 Validity of guidelines; contesting guideline.

Sec. 27. (1) A guideline adopted after the effective date of this section is not valid unless processed in substantial compliance with sections 24, 25, and 26. However, inadvertent failure to give notice to any person as required by section 24 does not invalidate a guideline which was otherwise processed in substantial compliance with sections 24, 25, and 26.

(2) A proceeding to contest a guideline on the grounds of noncompliance with sections 24, 25, and 26 shall be commenced within 2 years after the effective date of the guideline.

History: Add. 1986, Act 292, Imd. Eff. Dec. 22, 1986.

Popular name: Act 306

Popular name: APA

24.228 Adoption of standard form contract; notice.

Sec. 28. (1) Before the adoption of a standard form contract that would have been considered a rule but for the exemption from rule-making under section 7(p) or a policy exempt from rule-making under section 7(q), an agency shall give electronic notice of the proposed standard form contract or policy to the committee and the office of regulatory reform. The committee shall provide an electronic copy of the notice not later than the next business day after receipt of the electronic notice from the agency to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed standard form contract or policy.

(2) The electronic notice required by subsection (1) shall include all of the following:

(a) A statement of the terms of substance of the proposed standard form contract or policy, a description of the subjects and issues involved, and the proposed effective date of the standard form contract or policy.

(b) A statement that the addressee may express any views or arguments regarding the proposed standard form contract or policy or the standard form contract's or policy's effect on a person.

(c) The address to which comments may be sent and the date by which the comments shall be mailed or electronically transmitted, which date shall not be less than 35 days from the date of the mailing or electronic transmittal of the notice.

(d) A reference to the specific statutory provision under which the standard form contract or policy is issued.

(3) If the value of a proposed standard form contract exempt from rule-making under section 7(p) is $10,000,000.00 or more, the electronic notice required under subsection (1) shall include an electronic copy of the proposed standard form contract. If the value of the proposed standard form contract exempt from rule-making under section 7(p) is less than $10,000,000.00, the agency shall provide an electronic or paper copy of the proposed standard form contract or policy to any legislator requesting a copy.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

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Popular name: APA

CHAPTER 3

PROCEDURES FOR PROCESSING AND PUBLISHING RULES

24.231 Rules; continuation; amendment; rescission.

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.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA

24.232 Statutory construction; discrimination; crimes; adoption by reference; effect of guideline, operational memorandum, bulletin, interpretive statement, or form with instructions; agency order; limitation on rule-making delegation.

Sec. 32. (1) Definitions of words and phrases and rules of construction prescribed in any statute that are made applicable to all statutes of this state also apply to rules unless clearly indicated to the contrary.

(2) A rule or exception to a rule shall not discriminate in favor of or against any person. A person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

(3) The violation of a rule is a crime when so provided by statute. A rule shall not make an act or omission to act a crime or prescribe a criminal penalty for violation of a rule.

(4) An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation that has been adopted by an agency of the United States or by a nationally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and distribution to the public at cost and the rules shall state where copies of the adopted matter are available from the agency and the agency of the United States or the national organization or association and the cost of a copy as of the time the rule is adopted.

(5) A guideline, operational memorandum, bulletin, interpretive statement, or form with instructions is not enforceable by an agency, is considered merely advisory, and shall not be given the force and effect of law. An agency shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to support the agency's decision to act or refuse to act if that decision is subject to judicial review. A court shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to uphold an agency decision to act or refuse to act.

(6) Where a statute provides that an agency may proceed by rule-making or by order and an agency proceeds by order in lieu of rule-making, the order shall not be given general applicability to persons who were not parties to the proceeding or contested case before the issuance of the order, unless the order was issued after public notice and a public hearing.

(7) A rule shall not exceed the rule-making delegation contained in the statute authorizing the rule-making.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 2011, Act 270, Imd. Eff. Dec. 19, 2011.

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Popular name: Act 306

Popular name: APA

24.233 Rules; organization; operations; procedures.

Sec. 33. (1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations and may include therein forms with instructions. Sections 41, 42, 45, and 45a do not apply to such rules.

(2) An agency shall promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests.

(3) An agency may promulgate rules not inconsistent with this act or other applicable statutes prescribing procedures for contested cases.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Administrative rules: R 11.1 et seq.; R 24.61 et seq.; R 28.4011 et seq.; R 32.11 et seq.; R 35.1 et seq.; R 38.1 et seq.; R 169.1 et seq.; R 209.1 et seq.; R 211.401 et seq.; R 225.1 et seq.; R 247.1 et seq.; R 257.31 et seq.; R 257.301 et seq.; R 257.1001 et seq.; R 285.900.1; R 299.2901 et seq.; R 299.2903 et seq.; R 299.5001 et seq.; R 299.5101 et seq.; R 299.51001 et seq.; R 323.1001 et seq.; R 324.1 et seq.; R 325.10101 et seq.; R 330.1001 et seq.; R 340.1351 et seq.; R 349.291; R 390.621; R 400.1 et seq.; R 408.20001 et seq.; R 408.21401 et seq.; R 418.10101 et seq.; R 418.10104 et seq.; R 432.1001 et seq.; R 436.1951 et seq.; R 436.1963; R 451.1901 et seq.; R 451.2101 et seq.; R 501.351 et seq.; and R 722.1 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

24.234 Office of regulatory reform; agency; powers and duties.

Sec. 34. (1) The office of regulatory reform is an independent and autonomous type 1 agency within the department of management and budget. The office of regulatory reform has the powers and duties as set forth in executive order no. 1995-6 (executive reorganization order no. 1995-5), MCL 10.151, and shall exercise the powers and perform the duties prescribed by subsection (2) independently of the principal executive departments of this state, including, but not limited to, personnel, budgeting, procurement, and management-related functions.

(2) In addition to any other powers and duties described in subsection (1), the office of regulatory reform shall review proposed rules, coordinate processing of rules by agencies, work with the agencies to streamline the rule-making process, and consider efforts designed to improve public access to the rule-making process.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Compiler's note: For transfer of powers and duties of the office of regulatory reform from the department of management and budget to the office of regulatory reform, see E.R.O. No. 2000-1, compiled at MCL 10.152 of the Michigan compiled laws.

Popular name: Act 306

Popular name: APA

24.235 Joint committee on administrative rules; creation; appointment and terms of members; chairperson; expenses; meetings; hearings; action by committee; report; hiring and supervision of staff and related functions.

Sec. 35. (1) The joint committee on administrative rules is created and consists of 5 members of the senate and 5 members of the house of representatives appointed in the same manner as standing committees are appointed for terms of 2 years. Of the 5 members in each house, 3 shall be from the majority party and 2 shall be from the minority party. The chairperson of the committee shall alternate between houses each year. Members of the committee shall serve without compensation but shall be reimbursed for expenses incurred in the business of the committee. The expenses of the members of the senate shall be paid from appropriations to the senate and the expenses of the members of the house of representatives shall be paid from appropriations to the house of representatives. The committee may meet during a session of the legislature and during an interim between sessions. The committee may hold a hearing on a rule transmitted to the committee, any rule previously filed with the secretary of state, or any other matter the committee considers appropriate. Action by the committee, including action taken under section 52, shall be by concurring majorities of the members from each house. The committee shall report its activities and recommendations to the legislature at each regular session.

(2) The committee may hire staff to assist the committee under this act. However, the supervision of staff, budgeting, procurement, and related functions of the committee shall be performed by the council administrator under section 104a of the legislative council act, 1986 PA 268, MCL 4.1104a.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1978, Act 243, Imd. Eff. June 19, 1978;—Am. 1987, Act 13, Imd. Eff. Apr. 6, 1987;—Am. 1990, Act 290, Eff. Jan. 1, 1991;—Am. 1995, Act 178, Imd. Eff. Oct. 17, 1995;—Am. 2011, Act 245, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

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Popular name: APA

24.235a Repealed. 1993, Act 7, Eff. Dec. 8, 1994.

Compiler's note: The repealed section pertained to membership of joint committee on administrative rules beginning January 13, 1993.

Popular name: Act 306

Popular name: APA

24.236 Office of regulatory reform procedures and standards for rules.

Sec. 36. The office of regulatory reform may prescribe procedures and standards not inconsistent with this act or other applicable statutes for the drafting of rules, publication of required notices, and distribution of rules. The office of regulatory reform may prescribe procedures and standards not inconsistent with this act or other applicable statutes for the processing of rules within the executive branch. The procedures and standards shall be included in a manual which the office of regulatory reform shall publish and distribute in reasonable quantities to the state departments and the committee.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.238 Filing of requests by individuals for promulgation of certain rules.

Sec. 38. A person may request an agency to promulgate a rule. Within 90 days after filing of a request, the agency shall initiate the processing of a rule or issue a concise written statement of its principal reasons for denial of the request. The denial of a request is not subject to judicial review.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.239 Request for rule-making.

Sec. 39. (1) Before initiating any changes or additions to rules, an agency shall electronically file with the office of regulatory reinvention a request for rule-making in a format prescribed by the office of regulatory reinvention. The request for rule-making shall include the following:

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

(b) The problem the rule intends to address.

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

(d) If applicable, the decision record.

(2) If an agency receives recommendations or comments by any advisory committee or other advisory entity created by statute regarding a request for rule-making, the advisory committee or entity shall issue to the agency a decision record.

(3) An agency shall not proceed with the processing of a rule outlined in this chapter unless the office of regulatory reinvention has approved the request for rule-making. The office of regulatory reinvention is not required to approve a request for rule-making and shall do so only after it has indicated in its response to the request for rule-making submitted by an agency that there are appropriate and necessary policy and legal bases for approving the request for rule-making.

(4) The office of regulatory reinvention shall record the receipt of all requests for rule-making on the internet and shall make electronic or paper copies of approved requests for rule-making available to members of the general public. The office of regulatory reinvention shall issue a written or electronic response to the request for rule-making that specifically addresses whether the request has appropriate and necessary policy and legal bases for approving the request for rule-making.

(5) The office of regulatory reinvention shall immediately make available to the committee electronic copies of the request for rule-making submitted to the office of regulatory reinvention. On a weekly basis, the office of regulatory reinvention shall electronically provide to the committee a listing of all requests for rule-making approved or denied during the previous week. The committee shall electronically provide a copy of the approved and denied requests for rule-making, not later than the next business day after receipt of the notice from the office of regulatory reinvention, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2011, Act 239, Imd. Eff. Dec. 1, 2011.

Popular name: Act 306

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Popular name: APA

24.239a Notice of public hearing; approval by office of regulatory reform; copies.

Sec. 39a. (1) An agency may publish the notice of hearing under section 42 only if the office of regulatory reform has received draft proposed rules and has given the agency approval to proceed with a public hearing.

(2) After a grant of approval to hold a public hearing by the office of regulatory reform under subsection (1), the office of regulatory reform shall immediately provide a copy of the proposed rules to the committee. The committee shall provide a copy of the proposed rules, not later than the next business day after receipt of the notice from the office of regulatory reform, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

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

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2011, Act 243, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.241 Notice of public hearing before adoption of rule; opportunity to present data, views, questions, and arguments; time, contents, and transmittal of notice; renewal of requests for notices; provisions governing public hearing; presence and participation of certain persons at public hearing required.

Sec. 41. (1) Except as provided in section 44, before the adoption of a rule, an agency, or the office of regulatory reform, 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

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involved, and the proposed effective date of the rule.

(3) The agency, or the office of regulatory reform acting on behalf of an agency, shall transmit copies of the notice to each person who requested the agency in writing or electronically for advance notice of proposed action that may affect the person. If requested, the notice shall be by mail, in writing, or electronically 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 have 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.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989;—Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.241a Request by legislator for copies of proposed rules or changes in rules.

Sec. 41a. A member of the legislature may annually submit a written or electronic request to the office of regulatory reform requesting that a copy of all proposed rules or changes in rules, or any designated proposed rules or changes in rules submitted to the office of regulatory reform for its approval, be mailed or electronically transmitted to the requesting member upon his or her receipt by the office of regulatory reform.

History: Add. 1971, Act 171, Imd. Eff. Dec. 2, 1971;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.242 Notice of public hearing; publication requirements; submission of copy to office of regulatory reform; publication of notice in Michigan register; distribution of copies of notice of public hearing; meeting of joint committee on administrative rules.

Sec. 42. (1) Except as provided in section 44, at a minimum, an agency, or the office of regulatory reform acting on behalf of the agency, shall publish the notice of public hearing as prescribed in any applicable statute or, if none, the agency, or the office of regulatory reform acting on behalf of 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, or the office of regulatory reform acting on behalf of the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications or posting on the website of the agency or the office of regulatory reform.

(3) In addition to the requirements of subsection (1), the agency shall electronically submit a copy of the notice of public hearing to the office of regulatory reform for publication in the Michigan register. If the office of regulatory reform submitted the notice of public hearing on behalf of the agency, the office of regulatory reform shall publish the notice of public hearing in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall electronically file a copy of the notice of public hearing with the office of regulatory reform. Within 7 days after receipt of the notice of public hearing, the office of regulatory reform shall do all of the following before the public hearing:

(a) Electronically transmit a copy of the notice of public hearing to the committee.

(b) Provide notice electronically through publicly accessible internet media.

(4) After the office of regulatory reform electronically transmits a copy of the notice of public hearing to the committee, the committee shall electronically transmit copies of the notice of public hearing, not later than the next business day after receipt of the notice from the office of regulatory reform, to each member of the committee and to the members of the standing committees of the senate and house of representatives that deal with the subject matter of the proposed rule.

(5) After receipt of the notice of public hearing filed under subsection (3), the committee may meet to consider the proposed rule, take testimony, and provide the agency with the committee's informal response to the rule.

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History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989;—Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.243 Compliance required; contesting rule on ground of noncompliance.

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.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

Popular name: APA

24.244 Notice of public hearings on rules; exceptions to requirements; applicability of MCL 24.241 and 24.242 to rules promulgated under Michigan occupational safety and health act; "substantially similar" defined.

Sec. 44. (1) Sections 41 and 42 do not apply to an amendment or rescission of a rule that is obsolete or superseded, or that is required to make obviously needed corrections to make the rule conform to an amended or new statute or to accomplish any other solely formal purpose, if a statement to that effect is included in the legislative service bureau certificate of approval of the rule.

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

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

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.245 Approval of rules by legislative service bureau and office of regulatory reinvention; agency reports; regulatory impact statement; fiscal agency reports; exceptions.

Sec. 45. (1) Except as otherwise provided in this subsection, an agency shall electronically submit a proposed rule to the legislative service bureau for its formal certification. If requested by the legislative service bureau, the office of regulatory reinvention shall also transmit up to 4 paper copies of the proposed rule. The legislative service bureau shall promptly issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement. If the legislative service bureau fails to issue a certificate of approval within 21 calendar days after receipt of the submission for formal certification, the office of regulatory reinvention may issue a certificate of approval. If the legislative service bureau returns the submission to the agency before the expiration of the 21-calendar-day time period, the 21-calendar-day time period is tolled until the rule is resubmitted by the agency. The legislative service bureau shall have the remainder of the 21-calendar-day time period or 6 calendar days, whichever is longer, to consider the formal certification of the rule. The office of regulatory reinvention may approve a proposed rule if it considers the proposed rule to be legal and appropriate.

(2) Except as provided in subsection (6), after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall prepare an agency report containing a

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synopsis of the comments contained in the public hearing record, a copy of the request for rule-making, and the regulatory impact statement required under subsection (3). In the report, the agency shall describe any changes in the proposed rules that were made by the agency after the public hearing. The office of regulatory reinvention shall transmit by notice of transmittal to the committee copies of the rule, the agency reports containing the request for rule-making, a copy of the regulatory impact statement, and certificates of approval from the legislative service bureau and the office of regulatory reinvention. The office of regulatory reinvention shall also electronically submit to the committee a copy of the rule, any agency reports required under this subsection, any regulatory impact statements required under subsection (3), and any certificates of approval required under subsection (1). The agency shall electronically transmit to the committee the records described in this subsection within 1 year after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under section 45a(7).

(3) Except as provided in subsection (6), an agency shall prepare and include with a notice of transmittal under subsection (2) the request for rule-making and the response from the office of regulatory reinvention, a small business impact statement prepared under section 40(1), and a regulatory impact statement. The regulatory impact statement shall contain all of the following information:

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

(b) If requested by the office of regulatory reinvention or the committee, a comparison of the proposed rule to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

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

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

(e) An estimate of the change in the frequency of the targeted behavior expected from the rule.

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

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

(h) A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms.

(i) An estimate of the cost of rule imposition on the agency promulgating the rule.

(j) An estimate of the actual statewide compliance costs of the proposed rule on individuals.

(k) A demonstration that the proposed rule is necessary and suitable to achieve its purpose in proportion to the burdens it places on individuals.

(*l*) An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.

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

(n) An identification of the nature of any report required and the estimated cost of its preparation by small businesses required to comply with the proposed rule.

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

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

(q) An estimate of the ability of small businesses to absorb the costs estimated under subdivisions (n) to (p) without suffering economic harm and without adversely affecting competition in the marketplace.

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

(s) An identification of the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

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

(u) A statement describing how the agency has involved small businesses in the development of the rule.

(v) An estimate of the primary and direct benefits of the rule.

(w) An estimate of any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the rule.

(x) An estimate of any increase in revenues to state or local governmental units as a result of the rule.

(y) An estimate of any secondary or indirect benefits of the rule.

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(z) An identification of the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule and a cost-benefit analysis of the proposed rule.

(aa) A detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule upon small businesses as described in section 40(1)(a) to (d).

(bb) Any other information required by the office of regulatory reinvention.

(4) The agency shall electronically transmit the regulatory impact statement required under subsection (3) to the office of regulatory reinvention at least 28 days before the public hearing required under section 42. Before the public hearing can be held, the regulatory impact statement must be reviewed and approved by the office of regulatory reinvention. The agency shall also electronically transmit a copy of the regulatory impact statement to the committee before the public hearing and the agency shall make copies available to the public at the public hearing. The agency shall publish the regulatory impact statement on its website at least 10 days before the date of the public hearing.

(5) The committee shall electronically transmit to the senate fiscal agency and the house fiscal agency a copy of each rule and regulatory impact statement filed with the committee and 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 that, if the rule were 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 electronically report their findings to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.

(6) Subsections (2), (3), and (4) do not apply to a rule that is promulgated under section 33, 44, or 48.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1978, Act 243, Imd. Eff. June 19, 1978;—Am. 1980, Act 455, Imd. Eff. Jan. 15, 1981;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1983, Act 202, Imd. Eff. Nov. 10, 1983;—Am. 1984, Act 273, Eff. Mar. 29, 1985;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1987, Act 13, Imd. Eff. Apr. 6, 1987;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 38, Imd. Eff. Mar. 28, 1990;—Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005;—Am. 2011, Act 242, Imd. Eff. Dec. 8, 2011;—Am. 2013, Act 200, Eff. Mar. 19, 2014.

Constitutionality: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103; 611 NW2d 530 (2000).

Compiler's note: For transfer of powers and duties pertaining to small business economic impact statements under MCL 24.245 from the department of commerce to the office of regulatory reform in the executive office of the governor, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For creation of the office of regulatory reform within the executive office of the governor and transfer of the attorney general's duties to the office of regulatory reform, see E.R.O. No. 1995-5, compiled at MCL 10.151 of the Michigan Compiled Laws.

Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.245a Joint committee on administrative rules; review; filing notice of objection; effect; actions by legislature; filing of rule by office of regulatory reinvention; effective date of rule; withdrawal and resubmission of rule; tolling; "session day" defined.

Sec. 45a. (1) Except as otherwise provided in subsections (7) to (9), after the committee has received the notice of transmittal specified in section 45(2), the committee has 15 session days in which to consider the rule and to object to the rule by filing a notice of objection approved by a concurrent majority of the committee members or the committee may, by concurrent majority, waive the remaining session days. If the committee waives the remaining session days, the clerk of the committee shall promptly notify the office of regulatory reinvention of the waiver by electronic transmission. The committee may only approve a notice of objection if the committee affirmatively determines by a concurrent majority that 1 or more of the following conditions exist:

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

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

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

(d) The rule conflicts with state law.

(e) A substantial change in circumstances has occurred since enactment of the law upon which the proposed rule is based.

(f) The rule is arbitrary or capricious.

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

(2) If the committee does not file a notice of objection within the time period prescribed in subsection (1) or if the committee waives the remaining session days by concurrent majority, the office of regulatory reinvention may immediately file the rule, with the certificate of approval required under section 45(1), with the secretary of state. The rule takes effect immediately upon its filing with the secretary of state unless a later date is indicated within the rule.

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

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

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

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

(4) The notice of objection filed under subsection (3) stays the ability of the office of regulatory reinvention to file the rule with the secretary of state until the earlier of the following:

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

(b) The date of the rescission of the issuance of the notice of objection, approved by a concurrent majority of the committee members. The committee may meet to rescind the issuance of the notice of objection under this subdivision. If the committee rescinds the issuance of a notice of objection under this subdivision, the clerk of the committee shall promptly notify the office of regulatory reinvention by electronic transmission of the recission.

(5) If the legislation introduced under subsection (3) is defeated in either house and if the vote by which the legislation failed to pass is not reconsidered in compliance with the rules of that house, or if legislation introduced under subsection (3) is not adopted by both houses within the time period specified in subsection (4), the office of regulatory reinvention may file the rule with the secretary of state. The rule takes effect immediately upon its filing with the secretary of state unless a later date is specified within the rule.

(6) If the legislation introduced under subsection (3) is enacted by the legislature and presented to the governor within the 15-session-day period, the rule does not take effect unless the legislation is vetoed by the governor as provided by law. If the governor vetoes the legislation, the office of regulatory reinvention may file the rule with the secretary of state immediately. The rule takes effect 7 days after the date of its filing with the secretary of state unless a later effective date is indicated within the rule.

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

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

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

(8) Subsections (1) to (5) do not apply to rules adopted under sections 33, 44, and 48.

(9) An agency shall withdraw any rule pending before the committee at the final adjournment of a regular session held in an even-numbered year and resubmit that rule. A new and untolled 15-session-day time period described in subsection (1) shall begin upon resubmission of the rule to the committee for consideration.

(10) As used in this section only, "session day" means a day in which both the house of representatives and the senate convene in session and a quorum is recorded.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005;—Am. 2011, Act 245, Imd. Eff. Dec. 8, 2011.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

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24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

(a) The regulatory impact statement required under section 45(3).

(b) Instructions on any existing administrative remedies or appeals available to the public.

(c) Instructions regarding the method of complying with the rules, if available.

(d) Any rules filed with the secretary of state and the effective date of those rules.

(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

History: Add. 2011, Act 247, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.246 Promulgation of rules; procedure; arrangement, binding, certification, and inspection of rules.

Sec. 46. (1) To promulgate a rule the state office of administrative hearings and rules shall file in the office of the secretary of state 3 copies of the rule bearing the required certificates of approval and adoption, true copies of the rule without the certificates, and 1 electronic copy. The state office of administrative hearings and rules shall not file a rule, except an emergency rule under section 48 and rules processed under sections 33 and 44, until the time periods for committee and legislative consideration described in section 45a have elapsed.

(2) The secretary of state shall endorse the date and hour of filing of rules on the 3 copies of the filing bearing the certificates and shall maintain a file containing 1 copy for public inspection.

(3) The secretary of state, as often as he or she considers it advisable, shall cause to be arranged and bound in a substantial manner the rules hereafter filed in his or her office with their attached certificates and published in a supplement to the Michigan administrative code. The secretary of state shall certify under his or her hand and seal of the state on the frontispiece of each volume that it contains all of the rules filed and published for a specified period. The rules, when so bound and certified, shall be kept in the office of the secretary of state and no further record of the rules is required to be kept. The bound rules are subject to public inspection.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1993, Act 141, Imd. Eff. Aug. 4, 1993;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2006, Act 247, Imd. Eff. July 3, 2006.

Constitutionality: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, art 4, and violated the separation of powers provision of Const 1963, art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. *Blank v Department of Corrections*, 462 Mich 103; 611 NW2d 530 (2000).

Popular name: Act 306

Popular name: APA

24.247 Effective date of rules; withdrawal or rescission of promulgated rules; notice of withdrawal.

Sec. 47. (1) Except in case of a rule processed under section 48, a rule becomes effective on the date fixed in the rule, which shall not be earlier than 7 days after the date of its promulgation, or if a date is not so fixed then 7 days after the date of promulgation.

(2) Except in case of a rule processed under section 48, an agency may withdraw a promulgated rule which has not become effective by filing a written request stating reasons for withdrawal to the secretary of state on or before the last day for filing rules for the interim period in which the rules were first filed, or by filing a written request for withdrawal to the secretary of state and the office of regulatory reform, within a reasonable time as determined by the office of regulatory reform, after the last day for filing and before publication of the rule in the next supplement to the code. In any other case an agency may abrogate its rule only by rescission. When an agency has withdrawn a promulgated rule, it shall give notice, stating reasons, to the committee that the rule has been withdrawn.

(3) Sections 45 and 45a apply to rules for which a public hearing has not been held by April 1, 2000.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1971, Act 171, Imd. Eff. Dec. 2, 1971;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—

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Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.248 Emergency rules; scheduling substance as controlled substance; numbering and compilation; "administrator" defined.

Sec. 48. (1) If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by sections 41 and 42 and states in the rule the agency's reasons for that finding, and the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies shall be attached the certificates prescribed by section 45 and the governor's certificate concurring in the finding of emergency. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or 6 months after the date of its filing, whichever is earlier. The rule may be extended once for not more than 6 months by the filing of a governor's certificate of the need for the extension with the office of the secretary of state before expiration of the emergency rule.

(2) If the director of the department of community health determines that an imminent danger to the health or lives of individuals in this state can be prevented or controlled by scheduling a substance as a controlled substance under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251, and the administrator determines that the substance should be scheduled or rescheduled as a controlled substance, the department of licensing and regulatory affairs may dispense with all or part of the procedures required by sections 41 and 42 and file in the office of the secretary of state the copies prescribed by section 46 endorsed as an emergency rule, to 3 of which copies shall be attached the certificate of approval and the director of the department of community health's notification under section 2251(4) of the public health code, 1978 PA 368, MCL 333.2251. The office of regulatory reinvention shall submit the emergency rule draft language to the legislative service bureau for its formal certification within 7 business days of receipt from the department of licensing and regulatory affairs. The legislative service bureau shall issue a certificate of approval indicating whether the proposed rule is proper as to all matters of form, classification, and arrangement within 7 business days after receiving the submission and return the rule to the office of regulatory reinvention. If the legislative service bureau fails to issue a certificate of approval within 7 business days after receipt of the submission for formal certification, the office of regulatory reinvention may issue a certificate of approval. If the legislative service bureau returns the submission to the office of regulatory reinvention before the expiration of the 7-business-day time period, the 7-business-day time period is tolled until the rule is returned by the office of regulatory reinvention. The legislative service bureau shall have the remainder of the 7-business-day time period to consider the formal certification of the rule. Upon receipt from the legislative service bureau, the office of regulatory reinvention shall, within 7 business days, approve the proposed rule if it considers the proposed rule to be legal and appropriate. An emergency rule adopted under this subsection remains in effect until the earlier date of the following:

(a) An identical or similar rule is promulgated.

(b) An identical or similar bill is enacted into law.

(c) The administrator determines that the emergency rule is no longer necessary.

(d) Six months after the date of its filing, which may be extended for not more than 6 months by the administrator upon filing a certificate of extension with the office of secretary of state before the expiration of 6 months after the date of its filing.

(3) An emergency rule shall not be numbered and shall not be compiled in the Michigan administrative code, but shall be noted in the annual supplement to the code. The emergency rule shall be published in the Michigan register pursuant to section 8.

(4) If the agency desires to promulgate an identical or similar rule with an effectiveness beyond the final effective date of an emergency rule, the agency shall comply with the procedures prescribed by this act for the processing of a rule which is not an emergency rule. The rule shall be published in the Michigan register and in the code.

(5) As used in this section, "administrator" means that term as defined in section 7103 of the public health code, 1978 PA 368, MCL 333.7103.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1977, Act 82, Imd. Eff. Aug. 2, 1977;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2012, Act 181, Imd. Eff. June 19, 2012.

Popular name: Act 306

Popular name: APA

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24.249 Filed rules; transmission.

Sec. 49. (1) The secretary of state shall transmit, after copies of rules are filed in his or her office, the following:

(a) To the secretary of the committee and the state office of administrative hearings and rules, a paper copy upon which the day and hour of that filing have been endorsed.

(b) To the secretary of the senate and the clerk of the house of representatives, an electronic copy for distribution or transmittal by them to each member of the senate and the house of representatives. When the legislature is not in session, or is in session but will not meet for more than 10 days after the secretary and clerk have received the rules, the secretary and clerk shall mail or electronically transmit 1 copy to each member of the legislature at his or her home address.

(2) The secretary of the senate and clerk of the house of representatives shall present the rules to the senate and the house of representatives.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2006, Act 247, Imd. Eff. July 3, 2006.

Popular name: Act 306

Popular name: APA

24.250 Legislative standing committees; functions.

Sec. 50. (1) When the legislature is in session, the committee shall electronically notify the appropriate standing committee of each house of the legislature when rules have been transmitted to the committee by the secretary of state. If the committee determines that a hearing on those rules is to be held, it shall electronically notify the chairs of the standing committees. All members of the standing committees may be present and take part in the hearing.

(2) The chair or a designated member of the standing committee should be present at the hearing, but his or her absence does not affect the validity of the hearing.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004.

Popular name: Act 306

Popular name: APA

24.251 Amendment and rescission of rules by legislature; introduction of bill.

Sec. 51. If the committee, an appropriate standing committee, or a member of the legislature believes that a promulgated rule or any part thereof is unauthorized, is not within legislative intent, or is inexpedient, the committee or member may introduce a bill at a regular session, or special session if included in a governor's message, which in effect amends or rescinds the rule.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

Popular name: APA

24.252 Suspension of rules.

Sec. 52. (1) If authorized by concurrent resolution of the legislature, the committee, acting between regular sessions, may suspend a rule or a part of a rule promulgated during the interim between regular sessions.

(2) The committee shall electronically notify the agency promulgating the rule, the secretary of state, and the office of regulatory reform of any rule or part of a rule the committee suspends. A rule or part of a rule suspended under this section shall not be published in the Michigan register or in the Michigan administrative code while suspended.

(3) A rule suspended by the committee continues to be suspended not longer than the end of the next regular legislative session.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2004, Act 491, Eff. Jan. 12, 2005.

Compiler's note: Enacting section 2 of Act 491 of 2004 provides:

"Enacting section 2. This amendatory act applies to rules transmitted to the joint committee on administrative rules on or after January 12, 2005. Rules transmitted to the joint committee on administrative rules before January 12, 2005, shall be processed according to the act as it existed before January 12, 2005."

Popular name: Act 306

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Popular name: APA

24.253 Annual regulatory plan; link to website of office of regulatory reinvention.

Sec. 53. (1) Each agency shall prepare an annual regulatory plan that reviews the agency's rules. The annual regulatory plan shall be electronically transmitted to the office of regulatory reinvention.

(2) In completing the annual regulatory plan required by this section, the agency shall identify the rules the agency expects to review under subsection (4) in the next year, the rules it reasonably expects to process in the next year, the mandatory statutory rule authority it has not exercised, and the rules it expects to rescind in the next year.

(3) The annual regulatory plans completed under this section are advisory only and do not otherwise bind the agency or in any way prevent additional action.

(4) In completing a review of rules pursuant to the annual regulatory plans under this section, first priority shall be given to those rules that directly affect the greatest number of businesses, groups, and individuals and those rules that have the greatest actual statewide compliance costs for businesses, groups, and individuals. A review of rules under this subsection shall state the following:

(a) Whether there is a continued need for the rules.

(b) A summary of any complaints or comments received from the public concerning the rules.

(c) The complexity of complying with the rules.

(d) Whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government.

(e) The date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules.

(5) Annual regulatory plans completed under subsection (1) shall be electronically filed with the office of regulatory reinvention by July 1 of each year. After the office of regulatory reinvention approves the plan for review, the office of regulatory reinvention shall electronically provide a copy of the plan of review to the committee. The committee shall electronically provide a copy of each agency plan of review, not later than the next business day after receipt of the plan of review from the office of regulatory reinvention, to members of the committee and to members of the standing committees of the senate and house of representatives that deal with the subject matter of rules the agency may propose.

(6) Each agency shall provide on its website a link to the website of the office of regulatory reinvention.

History: Add. 1984, Act 273, Eff. Mar. 29, 1985;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2004, Act 23, Imd. Eff. Mar. 10, 2004;—Am. 2011, Act 238, Imd. Eff. Dec. 1, 2011.

Popular name: Act 306

Popular name: APA

24.254 Failure of committee to provide notice.

Sec. 54. Failure of the committee to provide any notices required under section 24, 28, 39, 39a, or 42 does not affect the validity of the processing or adoption of a rule.

History: Add. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.255 Annual supplement to Michigan administrative code; electronic publication by office of regulatory reform; contents.

Sec. 55. The office of regulatory reform annually shall publish an electronic supplement to the Michigan administrative code. The annual supplement shall contain all promulgated rules published in the Michigan register during the current year, except emergency rules, a cumulative numerical listing of amendments and additions to, and rescissions of rules since the last printed compilation of the Michigan administrative code, and a cumulative alphabetical index.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1977, Act 108, Eff. Jan. 1, 1978;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2003, Act 53, Imd. Eff. July 14, 2003.

Popular name: Act 306

Popular name: APA

24.256 Editorial work for Michigan register, Michigan administrative code, and code supplements; uniformity; conformity with Michigan compiled laws; correction of obvious errors; publication of Michigan administrative code; time for publishing supplements.

Sec. 56. (1) The office of regulatory reform shall perform the editorial work for the Michigan register and

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the Michigan administrative code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be under the ownership and control of the office of regulatory reform, shall be uniform, and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The office of regulatory reform may correct in the publications obvious errors in rules when requested by the promulgating agency to do so. The office of regulatory reform may provide for publishing all or any part of the Michigan administrative code in bound volume, pamphlet, electronic, or loose-leaf form. This subsection does not prevent a legislator from providing a copy or reproduction of a rule to a member of the general public.

(2) An annual supplement to the Michigan administrative code shall be published at the earliest practicable date.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.257 Omission of rules from Michigan register, Michigan administrative code, and code supplements; conditions; prorating publication and distribution cost of materials published in Michigan register and annual supplement; payment.

Sec. 57. (1) The office of regulatory reform may omit from the Michigan register, the Michigan administrative code, and the Michigan administrative code's annual supplement any rule, the publication of which would be unreasonably expensive or lengthy if the rule in printed or reproduced form is made available on application to the promulgating agency, if the Michigan administrative code publication and the Michigan register contain a notice stating the general subject of the omitted rule and how a copy of the rule may be obtained.

(2) The cost of publishing and distributing annual supplements to the Michigan administrative code and proposed rules, notices of public hearings on proposed rules, rules and emergency rules filed with the secretary of state, notices of proposed and adopted agency guidelines, and the items listed in section 7(*l*) in the Michigan register may be prorated by the office of regulatory reform on the basis of the volume of these materials published for each agency in the Michigan register and annual supplement to the Michigan administrative code, and the cost of publishing and distribution shall be paid out of appropriations to the agencies.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1988, Act 333, Imd. Eff. Sept. 30, 1988;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.258 Request for preparation of reproduction proofs or negatives of rules; reimbursement; publication of rules electronically or in pamphlets; cost.

Sec. 58. (1) When requested by an agency, the office of regulatory reform shall prepare reproduction proofs or negatives of the rules, or a portion of the rules, of the agency. The requesting agency shall reimburse the office of regulatory reform for preparing the reproduction proofs or negatives, and the cost of the preparation shall be paid out of appropriations to the agency.

(2) The Michigan administrative code may be arranged and printed to make convenient the publication electronically or in separate pamphlets of the parts of the Michigan administrative code relating to different agencies. Agencies may order the separate pamphlets, and the cost of the pamphlets shall be paid out of appropriations to the agencies.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1999, Act 262, Eff. Apr. 1, 2000.

Popular name: Act 306

Popular name: APA

24.259 Copies of Michigan register, Michigan administrative code, and code supplements; distribution; official use.

Sec. 59. (1) The office of regulatory reform shall publish the Michigan register, the Michigan administrative code, and the annual supplement to the Michigan administrative code free of charge on the office of regulatory reform's internet website and may publish these documents in printed or other electronic format for public subscription at a fee, determined by the department of management and budget, that is reasonably calculated to cover, but not to exceed, the publication and distribution costs. Any money collected

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by the department of management and budget from subscriptions shall be deposited into the general fund.

(2) The official Michigan administrative code is that published or made available on the office of regulatory reform's internet website free of charge.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984;—Am. 1986, Act 292, Imd. Eff. Dec. 22, 1986;—Am. 1995, Act 178, Imd. Eff. Oct. 17, 1995;—Am. 1999, Act 262, Eff. Apr. 1, 2000;—Am. 2003, Act 53, Imd. Eff. July 14, 2003.

Popular name: Act 306

Popular name: APA

24.261 Filing and publication of rules; presumptions arising therefrom; judicial notice.

Sec. 61. (1) The filing of a rule under this act raises a rebuttable presumption that the rule was adopted, filed with the secretary of state, and made available for public inspection as required by this act.

(2) The publication of a rule in the Michigan register, the Michigan administrative code, or in an annual supplement to the code raises a rebuttable presumption that:

(a) The rule was adopted, filed with the secretary of state, and made available for public inspection as required by this act.

(b) The rule printed in the publication is a true and correct copy of the promulgated rule.

(c) All requirements of this act relative to the rule have been complied with.

(3) The courts shall take judicial notice of a rule which becomes effective under this act.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1982, Act 413, Eff. Jan. 1, 1984.

Popular name: Act 306

Popular name: APA

24.263 Declaratory ruling by agency as to applicability of rule.

Sec. 63. On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

History: 1969, Act 306, Eff. July 1, 1970.

Administrative rules: R 32.11 et seq.; R 38.131 et seq.; R 299.5001 et seq.; R 323.1001 et seq.; R 324.1 et seq.; R 325.1211; R 325.10101 et seq.; R 338.81; R 340.1351 et seq.; R 400.1 et seq.; R 408.20001 et seq.; and R 436.1971 et seq. of the Michigan Administrative Code.

Popular name: Act 306

Popular name: APA

24.264 Declaratory judgment as to validity or applicability of rule.

Sec. 64. Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. The agency shall be made a party to the action. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 2011, Act 243, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

CHAPTER 4
PROCEDURES IN CONTESTED CASES

24.271 Parties in contested case; time and notice of hearing; service of notice or other process on legislator.

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Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(2) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(a) A statement of the date, hour, place, and nature of the hearing. Unless otherwise specified in the notice the hearing shall be held at the principal office of the agency.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is given, the initial notice may state the issues involved. Thereafter on application the agency or other party shall furnish a more definite and detailed statement on the issues.

(3) A member of the legislature shall not be privileged from service of notice or other process pursuant to this chapter except on a day on which there is a scheduled meeting of the house of which he or she is a member. However, a member of the legislature shall not be privileged from service of notice or other process pursuant to this chapter on a day on which there is a scheduled meeting of the house of which he or she is a member, if such service of notice or process is executed by certified mail, return receipt requested.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1984, Act 28, Imd. Eff. Mar. 12, 1984.

Constitutionality: Administrative hearings under the Administrative Procedures Act, however informal, comport with the procedural fairness required by due process in the absence of an explicit statutory requirement that a contested evidentiary hearing be held. *Convalescent Center v Blue Cross*, 414 Mich 247; 324 NW2d 851 (1982).

Popular name: Act 306

Popular name: APA

24.272 Defaults, written answers, evidence, argument, cross-examination.

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(2) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(3) The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

(4) A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.273 Subpoenas; issuance; revocation.

Sec. 73. An agency authorized by statute to issue subpoenas, when a written request is made by a party in a contested case, shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid to subpoenaed witnesses in accordance with section 2552 of Act No. 236 of the Public Acts of 1961, as amended, being section 600.2552 of the Compiled Laws of 1948. In case of refusal to comply with a subpoena, the party on whose behalf it was issued may file a petition, in the circuit court for Ingham county or for the county in which the agency hearing is held, for an order requiring compliance.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.274 Oaths; depositions; disclosure of agency records.

Sec. 74. (1) An officer of an agency may administer an oath or affirmation to a witness in a matter before the agency, certify to official acts and take depositions. A deposition may be used in lieu of other evidence when taken in compliance with the general court rules. An agency authorized to adjudicate contested cases may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

(2) An agency that relies on a witness in a contested case, whether or not an agency employee, who has made prior statements or reports with respect to the subject matter of his testimony, shall make such

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statements or reports available to opposing parties for use on cross-examination. On a request for identifiable agency records, with respect to disputed material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.275 Evidence; admissibility, objections, submission in written form.

Sec. 75. In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.275a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.

Sec. 75a. (1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(*i*) A person under 16 years of age.

(*ii*) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a contested case in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The agency shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

History: Add. 1987, Act 46, Eff. Jan. 1, 1988;—Am. 1998, Act 327, Imd. Eff. Aug. 3, 1998.

Popular name: Act 306

Popular name: APA

24.276 Evidence to be entered on record; documentary evidence.

Sec. 76. Evidence in a contested case, including records and documents in possession of an agency of

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which it desires to avail itself, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under section 77. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.277 Official notice of facts; evaluation of evidence.

Sec. 77. An agency in a contested case may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within the agency's specialized knowledge. The agency shall notify parties at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the parties shall be given an opportunity before final decision to dispute the fact or its materiality. An agency may use its experience, technical competence and specialized knowledge in the evaluation of evidence presented to it.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.278 Stipulations; disposition of cases, methods.

Sec. 78. (1) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties are requested to thus agree upon facts when practicable.

(2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.279 Presiding officers; designation; disqualification, inability.

Sec. 79. An agency, 1 or more members of the agency, a person designated by statute or 1 or more hearing officers designated and authorized by the agency to handle contested cases, shall be presiding officers in contested cases. Hearings shall be conducted in an impartial manner. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. When a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.280 Presiding officer; powers and duties; "nonmeeting day" defined.

Sec. 80. (1) A presiding officer may do all of the following:

(a) Administer oaths and affirmations.

(b) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence.

(c) Provide for the taking of testimony by deposition.

(d) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

(e) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(f) Act upon an application for an award of costs and fees under sections 121 to 127.

(2) In order to assure adequate representation for the people of this state, when the presiding officer knows that a party in a contested case is a member of the legislature of this state, and the legislature is in session, the contested case shall be continued by the presiding officer to a nonmeeting day.

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(3) In order to assure adequate representation for the people of this state, when the presiding officer knows that a party to a contested case is a member of the legislature of this state who serves on a legislative committee, subcommittee, commission, or council that is scheduled to meet during the legislative session while the legislature is temporarily adjourned, or that is scheduled to meet during the interim between legislative sessions after the legislature has adjourned sine die, or when the partisan caucus of which the legislator is a member is scheduled to meet, the contested case shall be continued to a nonmeeting day.

(4) In order to assure adequate representation for the people of this state, when the presiding officer knows that a witness in a contested case is a member of the legislature of this state, and the legislature is in session, or the member is serving on a legislative committee, subcommittee, commission, or council that is scheduled to meet during the legislative session while the legislature is temporarily adjourned or during the interim between legislative sessions after the legislature has adjourned sine die, or when the partisan caucus of which the legislator is a member is scheduled to meet the contested case need not be continued, but the taking of the legislator's testimony, as a witness shall be postponed to the earliest practicable nonmeeting day.

(5) The presiding officer shall notify all parties to the contested case, and their attorneys, of any continuance granted pursuant to this section.

(6) As used in this section, "nonmeeting day" means a day on which there is not a scheduled meeting of the house of which the party or witness is a member, nor a legislative committee meeting or public hearing scheduled by a committee, subcommittee, commission, or council of which he or she is a member, nor a scheduled partisan caucus of the members of the house of which he or she is a member.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1984, Act 28, Imd. Eff. Mar. 12, 1984;—Am. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.281 Proposals for decision; contents.

Sec. 81. (1) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party adversely affected to file exceptions and present written arguments to the officials who are to make the decision. Oral argument may be permitted with consent of the agency.

(2) The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact and law necessary to the proposed decision, prepared by a person who conducted the hearing or who has read the record.

(3) The decision, without further proceedings, shall become the final decision of the agency in the absence of the filing of exceptions or review by action of the agency within the time provided by rule. On appeal from or review of a proposal of decision the agency, except as it may limit the issue upon notice or by rule, shall have all the powers which it would have if it had presided at the hearing.

(4) The parties, by written stipulation or at the hearing, may waive compliance with this section.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.282 Communications by agency staff; limitations; exceptions.

Sec. 82. Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

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Popular name: APA

24.285 Final decision and order.

Sec. 85. A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1993, Act 83, Eff. Apr. 1, 1994.

Popular name: Act 306

Popular name: APA

24.286 Official records of hearings.

Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include:

(a) Notices, pleadings, motions and intermediate rulings.

(b) Questions and offers of proof, objections and rulings thereon.

(c) Evidence presented.

(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.

(2) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

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History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.287 Rehearings.

Sec. 87. (1) An agency may order a rehearing in a contested case on its own motion or on request of a party.

(2) Where for justifiable reasons the record of testimony made at the hearing is found by the agency to be inadequate for purposes of judicial review, the agency on its own motion or on request of a party shall order a rehearing.

(3) A request for a rehearing shall be filed within the time fixed by this act for instituting proceedings for judicial review. A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for agency reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

CHAPTER 5
LICENSES

24.291 Licensing; applicability of contested case provisions; expiration of license.

Sec. 91. (1) When licensing is required to be preceded by notice and an opportunity for hearing, the provisions of this act governing a contested case apply.

(2) When a licensee makes timely and sufficient application for renewal of a license or a new license with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order or a later date fixed by order of

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the reviewing court. This subsection does not affect valid agency action then in effect summarily suspending such license under section 92.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.292 License; suspension, revocation, and amendment proceedings; summary suspension.

Sec. 92. (1) Before beginning proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct that warrants the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license except as otherwise provided in any of the following:

(a) The support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

(b) The regulated occupation support enforcement act, 1996 PA 236, MCL 338.3431 to 338.3436.

(c) Section 41309 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.41309.

(2) If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1996, Act 237, Eff. Jan. 1, 1997;—Am. 2014, Act 540, Eff. Apr. 15, 2015.

Popular name: Act 306

Popular name: APA

CHAPTER 6
JUDICIAL REVIEW

24.301 Judicial review as of right or by leave.

Sec. 101. When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law. Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require the filing before judicial review is sought. A preliminary, procedural or intermediate agency action or ruling is not immediately reviewable, except that the court may grant leave for review of such action if review of the agency's final decision or order would not provide an adequate remedy.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.302 Judicial review; method.

Sec. 102. Judicial review of a final decision or order in a contested case shall be by any applicable special statutory review proceeding in any court specified by statute and in accordance with the general court rules. In the absence or inadequacy thereof, judicial review shall be by a petition for review in accordance with sections 103 to 105.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.303 Petition for review; filing; contents; copy of agency decision or order.

Sec. 103. (1) Except as provided in subsection (2), a petition for review shall be filed in the circuit court for the county where petitioner resides or has his or her principal place of business in this state, or in the circuit court for Ingham county.

(2) As used in this subsection, “adoptee” means a child who is to be or who is adopted. In the case of an appeal from a final determination of the office of youth services within the department of social services regarding an adoption subsidy, a petition for review shall be filed:

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(a) For an adoptee residing in this state, in the probate court for the county in which the petition for adoption was filed or in which the adoptee was found.

(b) For an adoptee not residing in this state, in the probate court for the county in which the petition for adoption was filed.

(3) A petition for review shall contain a concise statement of:

(a) The nature of the proceedings as to which review is sought.

(b) The facts on which venue is based.

(c) The grounds on which relief is sought.

(d) The relief sought.

(4) The petitioner shall attach to the petition, as an exhibit, a copy of the agency decision or order of which review is sought.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1980, Act 289, Eff. Oct. 17, 1980.

Popular name: Act 306

Popular name: APA

24.304 Petition for review; filing, time; stay; record; scope.

Sec. 104. (1) A petition shall be filed in the court within 60 days after the date of mailing notice of the final decision or order of the agency, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon. The filing of the petition does not stay enforcement of the agency action but the agency may grant, or the court may order, a stay upon appropriate terms.

(2) Within 60 days after service of the petition, or within such further time as the court allows, the agency shall transmit to the court the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for judicial review stipulate that the record be shortened. A party unreasonably refusing to so stipulate may be taxed by the court for the additional costs. The court may permit subsequent corrections to the record.

(3) The review shall be conducted by the court without a jury and shall be confined to the record. In a case of alleged irregularity in procedure before the agency, not shown in the record, proof thereof may be taken by the court. The court, on request, shall hear oral arguments and receive written briefs.

History: 1969, Act 306, Eff. July 1, 1970;—Am. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.305 Inadequate record; additional evidence, modification of findings, decision order.

Sec. 105. If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper. The agency may modify its findings, decision or order because of the additional evidence and shall file with the court the additional evidence and any new findings, decision or order, which shall become part of the record.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.306 Grounds for reversals.

Sec. 106. (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

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History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

CHAPTER 7
MISCELLANEOUS PROVISIONS

24.311 Repeals.

Sec. 111. Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, are repealed.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.312 References to repealed acts.

Sec. 112. A reference in any other law to Act No. 88 of the Public Acts of 1943, as amended, or Act No. 197 of the Public Acts of 1952, as amended, is deemed to be a reference to this act.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.313 Effective date and applicability.

Sec. 113. This act is effective July 1, 1970, and except as to proceedings then pending applies to all agencies and agency proceedings not expressly exempted.

History: 1969, Act 306, Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.314 Rules in process.

Sec. 114. When an agency has completed any or all of the processing of a rule pursuant to Act No. 88 of the Public Acts of 1943, as amended, before July 1, 1970, similar processing required by this act need not be completed and the balance of the processing and the publication of the rule shall be completed pursuant to this act. An effective date may be added to such a rule although it was not included in the notice of hearing on the rule pursuant to subsection (1) of section 41, when such notice was given before July 1, 1970.

History: Add. 1970, Act 40, Imd. Eff. July 1, 1970.

Popular name: Act 306

Popular name: APA

24.315 Exemptions.

Sec. 115. (1) Chapters 4 and 6 do not apply to proceedings conducted under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(2) Chapters 4 and 8 do not apply to a hearing conducted by the department of corrections pursuant to chapter IIIA of Act No. 232 of the Public Acts of 1953, being sections 791.251 to 791.256 of the Michigan Compiled Laws.

(3) Chapter 8 does not apply to any of the following:

(a) A contested case or other proceeding regarding the granting or renewing of an operator's or chauffeur's license by the secretary of state.

(b) Proceedings conducted by the Michigan employment relations commission.

(c) Worker's disability compensation proceedings under Act No. 317 of the Public Acts of 1969.

(d) Unemployment compensation hearings under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, being sections 421.1 to 421.75 of the Michigan Compiled Laws.

(e) Family independence agency public assistance hearings under section 9 of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.9 of the Michigan Compiled Laws.

(4) Chapter 6 does not apply to final decisions or orders rendered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws.

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(5) Chapters 2, 3, and 5 do not apply to the municipal employees retirement system and retirement board created by the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws, on and after August 15, 1996.

(6) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 401(k) of the internal revenue code under the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being sections 38.1 to 38.69 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(7) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to section 403(b) of the internal revenue code under the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1437 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

(8) Until the expiration of 12 months after the effective date of the amendatory act that added this subsection, chapters 2, 3, and 5 do not apply to the establishment, implementation, administration, operation, investment, or distribution of a Tier 2 retirement plan established pursuant to the internal revenue code under the Michigan legislative retirement system act, Act No. 261 of the Public Acts of 1957, being sections 38.1001 to 38.1080 of the Michigan Compiled Laws. Upon the expiration of 12 months after the effective date of the amendatory act that added this subsection, rules and guidelines promulgated or processed under this subsection are not effective and binding unless promulgated and processed in accordance with this act.

History: Add. 1970, Act 40, Imd. Eff. July 1, 1970;—Am. 1979, Act 139, Imd. Eff. Nov. 7, 1979;—Am. 1984, Act 196, Imd. Eff. July 3, 1984;—Am. 1988, Act 85, Imd. Eff. Mar. 29, 1988;—Am. 1993, Act 83, Eff. Apr. 1, 1994;—Am. 1996, Act 222, Eff. Aug. 15, 1996;—Am. 1996, Act 489, Eff. Mar. 31, 1997.

Compiler's note: Section 2 of Act 85 of 1988 provides: "This amendatory act shall apply to any matter or proceeding pending on the effective date of this amendatory act and to any matter for which an application under section 847 of Act No. 317 of the Public Acts of 1969, being section 418.847 of the Michigan Compiled Laws, has been filed after March 31, 1986."

Popular name: Act 306

Popular name: APA

CHAPTER 8

24.321 Meanings of words and phrases.

Sec. 121. For the purposes of this chapter, the words and phrases described in section 122 have the meanings ascribed to them in that section.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.322 Definitions.

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

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

(a) The reasonable and necessary expenses of expert witnesses as determined by the presiding officer.

(b) The reasonable cost of any study, analysis, engineering report, test, or project that is determined by the presiding officer to have been necessary for the preparation of a party's case.

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

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

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

(b) The sole owner of an unincorporated business or any partnership, corporation, association, or organization whose net worth exceeded $3,000,000.00 at the time the contested case was initiated and that is not either exempt from taxation pursuant to section 501(c)(3) of the internal revenue code, 26 USC 501, or a

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cooperative association as defined in section 15(a) of the agricultural marketing act, 12 USC 1141j(a).

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

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

(4) "Presiding officer" means an agency, 1 or more members of the agency, a person designated by statute to conduct a contested case, or a hearing officer designated and authorized by the agency to conduct a contested case.

(5) "Prevailing party" means either of the following, as applicable:

(a) In an action involving several remedies, or issues or counts that state different causes of actions or defenses, the party prevailing as to each remedy, issue, or count.

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

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984;—Am. 2011, Act 247, Imd. Eff. Dec. 8, 2011.

Popular name: Act 306

Popular name: APA

24.323 Awarding costs and fees; finding; hearing; evidence; reduction or denial of award; final action; amount of costs and fees; applicability of section.

Sec. 123. (1) The presiding officer that conducts a contested case shall award to a prevailing party, other than an agency, the costs and fees incurred by the party in connection with that contested case, if the presiding officer finds that the position of the agency to the proceeding was frivolous. To find that an agency's position was frivolous, the presiding officer shall determine that at least 1 of the following conditions has been met:

(a) The agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.

(b) The agency had no reasonable basis to believe that the facts underlying its legal position were in fact true.

(c) The agency's legal position was devoid of arguable legal merit.

(2) If the parties to a contested case do not agree on the awarding of costs and fees under this section, a hearing shall be held if requested by a party, regarding the awarding of costs and fees and the amount thereof. The party seeking an award of costs and fees shall present evidence establishing all of the following:

(a) That the position of the agency was frivolous.

(b) That the party is a prevailing party.

(c) The amount of costs and fees sought including an itemized statement from any attorney, agent, or expert witness who represented the party showing the rate at which the costs and fees were computed.

(d) That the party is eligible to receive an award under this section. Financial records of a party shall be exempt from public disclosure if requested by the party at the time the records are submitted pursuant to this section.

(e) That a final order not subject to further appeal other than for the judicial review of costs and fees provided for in section 125 has been entered in the contested case regarding the subject matter of the contested case.

(3) The presiding officer may reduce the amount of the costs and fees to be awarded, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the contested case.

(4) The final action taken by the presiding officer under this section in regard to costs and fees shall include written findings as to that action and the basis for the findings.

(5) Subject to subsection (6), the amount of costs and fees awarded under this section shall include those reasonable and necessary costs actually incurred by the party and any costs allowed by law or by a rule promulgated under this act. Subject to subsection (6), the amount of fees awarded under this section shall be based upon the prevailing market rate for the kind and quality of the services furnished, subject to the following:

(a) The expenses paid for an expert witness shall be reasonable and necessary as determined by the presiding officer.

(b) An attorney or agent fee shall not be awarded at a rate of more than $75.00 per hour unless the presiding officer determines that special circumstances existed justifying a higher rate or an applicable rule promulgated by the agency provides for the payment of a higher rate because of special circumstances.

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(6) The costs and fees awarded under this section shall only be awarded to the extent and amount that the agency caused the prevailing party to incur those costs and fees.

(7) This section does not apply to any agency in its role of hearing or adjudicating a case. Unless an agency has discretion to proceed, this section does not apply to an agency acting ex rel on the information and at the instigation of a nonagency person who has a private interest in the matter nor to an agency required by law to commence a case upon the action or request of another nonagency person.

(8) This section does not apply to an agency that has such a minor role as a party in the case in comparison to other nonprevailing parties so as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.324 Delaying entry of final order prohibited.

Sec. 124. An application for costs and fees and the awarding thereof under this chapter shall not delay the entry of a final order in a contested case.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.325 Judicial review; modification of final action; making award pursuant to MCL 600.2421d.

Sec. 125. (1) A party that is dissatisfied with the final action taken by the presiding officer under section 123 in regard to costs and fees may seek judicial review of that action pursuant to chapter 6.

(2) The court reviewing the final action of a presiding officer pursuant to subsection (1) may modify that action only if the court finds that the failure to make an award or the making of an award was an abuse of discretion, or that the calculation of the amount of the award was not based on substantial evidence.

(3) An award of costs and fees made by a court under this section shall only be made pursuant to section 2421d of Act No. 236 of the Public Acts of 1961, being section 600.2421d of the Michigan Compiled Laws.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.326 Annual report; payment of costs and fees.

Sec. 126. (1) The director of the department of management and budget shall report annually to the legislature regarding the amount of costs and fees paid by the state under this chapter during the preceding fiscal year. The report shall describe the number, nature, and amount of the awards; the claims involved; and any other relevant information which would aid the legislature in evaluating the scope and impact of the awards. Each agency shall provide the director of the department of management and budget with information as is necessary for the director to comply with the requirements of this section.

(2) If costs and fees are awarded under this chapter to a prevailing party, the agency or agencies over which the party prevailed shall pay those costs and fees.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.327 Recovery of same costs under other law prohibited.

Sec. 127. If a prevailing party recovers costs and fees under this chapter in a contested case, the prevailing party is not entitled to recover those same costs for that contested case under any other law.

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984.

Popular name: Act 306

Popular name: APA

24.328 Applicability of MCL 24.321 to 24.327 to contested cases.

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

History: Add. 1984, Act 196, Imd. Eff. July 3, 1984;—Am. 1989, Act 288, Imd. Eff. Dec. 26, 1989.

Popular name: Act 306

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Popular name: APA

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