Michigan
Law Revision Commission

THIRTY-SECOND ANNUAL REPORT
1997

MICHIGAN
LAW REVISION COMMISSION

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ANTHONY DEREZINSKI, *Vice Chairman*
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GEORGE E. WARD

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MICHIGAN LAW REVISION COMMISSION
Thirty-Second Annual Report to the Legislature
for Calendar Year 1997

To the Members of the Michigan Legislature:

The Michigan Law Revision Commission hereby presents its thirty-second annual report pursuant to section 403 of Act No. 268 of the Public Acts of 1986, MCL § 4.1403.

The Commission, created by section 401 of Act No. 268 of the Public Acts of 1986, MCL § 4.1401, consists of two members of the Senate, with one from the majority and one from the minority party, appointed by the Majority Leader of the Senate; two members of the House of Representatives, with one from the majority and one from the minority party, appointed by the Speaker of the House; the Director of the Legislative Service Bureau or his or her designee, who serves as an ex-officio member; and four members appointed by the Legislative Council. The terms of the members appointed by the Legislative Council are staggered. The Legislative Council designates the Chairman of the Commission. The Vice Chairman is elected by the Commission.

Membership

The legislative members of the Commission during 1997 were Senator Bill Bullard, Jr. of Highland Township; Senator Gary Peters of Bloomfield Township; Representative Michael Nye of Litchfield; and Representative Ted Wallace of Detroit. As Legislative Council Administrator, Dianne M. Odrobina was the ex-officio member of the Commission. The appointed members of the Commission were Richard McLellan, Anthony Derezinski, Maura Corrigan, and George Ward. Mr. McLellan served as Chairman. Mr. Derezinski served as Vice Chairman. Professor Kevin Kennedy of the Detroit College of Law at Michigan State University served as Executive Secretary. Gary Gulliver served as the liaison between the Legislative Service Bureau and the Commission. Brief biographies of the 1997 Commission members and staff are located at the end of this report.

The Commission's Work in 1997

The Commission is charged by statute with the following duties:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and to recommend needed reform.

2. To receive and consider proposed changes in law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association, and other learned bodies.

3. To receive and consider suggestions from justices, judges, legislators and other public officials, lawyers, and the public generally as to defects and anachronisms in the law.

4. To recommend such changes in the law as it deems necessary in order to modify or eliminate antiquated and inequitable rules of law, and to bring the civil and criminal law of this state into harmony with modern conditions.

5. To encourage the faculty and students of the law schools of this state to participate in the work of the Commission.

6. To cooperate with the law revision commissions of other states and Canadian provinces.

7. To issue an annual report.

The problems to which the Commission directs its studies are largely identified through an examination by the Commission members and the Executive Secretary of the statutes and case law of Michigan, the reports of learned bodies and commissions from other jurisdictions, and legal literature. Other subjects are brought to the attention of the Commission by various organizations and individuals, including members of the Legislature.

The Commission's efforts during the past year have been devoted primarily to three areas. First, Commission members provided information to legislative committees related to various proposals previously recommended by the Commission. Second, the Commission examined suggested legislation proposed by various groups involved in law revision activity. These proposals included legislation advanced by the Council of State Governments, the National Conference of Commissioners on Uniform State Laws, and the law revision commissions of various jurisdictions within and without the United

States. Finally, the Commission considered various problems relating to special aspects of current Michigan law suggested by its own review of Michigan decisions and the recommendations of others.

As in previous years, the Commission studied various proposals that did not lead to legislative recommendations. In the case of certain uniform or model acts, the Commission sometimes found that the subjects treated had been considered by the Michigan Legislature in recent legislation and, therefore, did not recommend further action. In other instances, uniform or model acts were not pursued because similar legislation was currently pending before the Legislature upon the initiation of legislators having a special interest in the particular subject.

In 1997, the Commission studied the six topics listed below. The Commission recommends immediate legislative action on the first five topics. On the sixth topic, the Commission presents a report that updates the status of the proposed Administrative Procedures Act of 1998.

The six topics are:

(1) Article 6 of the Uniform Commercial Code

(2) Public Disclosure of Government E-Mail.

(3) Recent Court Opinions Suggesting Legislative Action.

(4) The Uniform Unincorporated Nonprofit Associations Act.

(5) The Uniform Conflict of Laws-Limitations Act.

(6) Proposed Administrative Procedures Act (report).

Proposals for Legislative Consideration in 1998

In addition to its new recommendations, the Commission recommends favorable consideration of the following recommendations of past years upon which no final action was taken in 1997:

(1) Revisions to the Michigan "Lemon Law", 1995 Annual Report, page 7.

(2) Uniform Fraudulent Transfer Act, 1988 Annual Report, page 13.

(3) Consolidated Receivership Statute, 1988 Annual Report, page 72.

(4) Condemnation Provisions Inconsistent with the Uniform Condemnation Procedures Act, 1989 Annual Report, page 15.

(5) Judicial Review of Administrative Action, 1990 Annual Report, page 19.

(6) Amendment of Uniform Statutory Rule Against Perpetuities, 1990 Annual Report, page 141.

(7) Amendment of the Uniform Contribution Among Tortfeasors Act, 1991 Annual Report, page 19.

(8) International Commercial Arbitration, 1991 Annual Report, page 31.

(9) Tortfeasor Contribution Under Michigan Compiled Laws §600.2925a(5), 1992 Annual Report, page 21.

(10) Amendments to Michigan's Estate Tax Apportionment Act, 1992 Annual Report, page 29.

(11) Uniform Trade Secrets Act, 1993 Annual Report, page 7.

(12) Amendments to Michigan's Anatomical Gift Act, 1993 Annual Report, page 53.

(13) Ownership of a Motorcycle for Purposes of Receiving No-Fault Insurance Benefits, 1993 Annual Report, page 131.

(14) The Uniform Putative and Unknown Fathers Act and Revisions to Michigan Laws Concerning Parental Rights of Unwed Fathers, 1994 Annual Report, page 117.

Current Study Agenda

Topics on the current study agenda of the Commission are:

(1) Declaratory Judgment in Libel Law/Uniform Correction or Clarification of Defamation Act.
(2) Medical Practice Privileges in Hospitals (Procedures for Granting and Withdrawal).
(3) Health Care Consent for Minors.
(4) Health Care Information, Access, and Privacy.

(5) Public Officials -- Conflict of Interest and Misuse of Office.
(6) Uniform Statutory Power of Attorney.
(7) Uniform Custodial Trust Act.
(8) Legislation Concerning Teleconference Participation in Public Meetings.
(9) Michigan Legislation Concerning Native American Tribes.
(10) Revisions to Michigan's Administrative Procedures Act and to Procedures for Judicial Review of Agency Action.
(11) Legislation Affecting Cities with a Population Greater than One Million.

The Commission continues to operate with its sole staff member, the part-time Executive Secretary, whose offices are in the Detroit College of Law at Michigan State University, East Lansing, Michigan 48824. The Executive Secretary of the Commission is Professor Kevin Kennedy, who was responsible for the publication of this report. By using faculty members at the several Michigan law schools as consultants and law students as researchers, the Commission has been able to operate at a budget substantially lower than that of similar commissions in other jurisdictions. At the end of this report, the Commission provides a list of more than 70 Michigan statutes passed since 1967 upon the recommendation of the Commission.

The Legislative Service Bureau, through Mr. Gary Gulliver, its Director of Legal Research, has generously assisted the Commission in the development of its legislative program. The Director of the Legislative Service Bureau continues to handle the fiscal operations of the Commission under procedures established by the Legislative Council.

The Commission continues to welcome suggestions for improvement of its program and proposals.

Respectfully submitted,

Richard D. McLellan, Chairman
Anthony Derezinski, Vice Chairman
Maura Corrigan
George Ward
Senator Bill Bullard, Jr.
Senator Gary Peters
Representative Michael Nye
Representative Ted Wallace
Dianne M. Odrobina

REPORT ON THE PROPOSED ADMINISTRATIVE PROCEDURES ACT OF 1998

The Michigan Law Revision Commission first reported to the Legislature on a proposed Michigan Administrative Procedures Act (MAPA) in 1989. In that report, Professor Don LeDuc of Cooley Law School presented a proposal for revising MAPA. The LeDuc proposal was reduced to bill form and introduced in the Legislature, but no further action was taken.

The Commission renewed its study of MAPA in 1996. In its 1996 Annual Report, the Commission published a study report, *The Proposed Administrative Procedures Act of 1997*, prepared by Professor Steven Croley of the University of Michigan Law School. That study report proposes broad revisions of MAPA. The Commission received written comments on the proposed MAPA from several state agencies (the Departments of State, Consumer and Industry Services, Civil Rights, and Corrections), state bar association groups (the Standing Committee on Appellate Court Administration and the Administrative Law Section), and other interested persons.

The Commission held a public hearing at the Capitol on June 9, 1997, to receive testimony on the proposed MAPA. In addition to members of the Commission and Professor Croley, six persons appeared and gave testimony on the proposed MAPA, including representatives of the Department of State and of the Department of Consumer and Industry Services, a representative of the Administrative Law Section of the State Bar of Michigan, a representative of the Standing Committee on Appellate Court Administration, and two witnesses appearing in their personal capacity. The following summarizes the proceedings and testimony given at the June 9 hearing.

Richard McLellan, Commission Chairman, opened the hearing and introduced the first witness, Mr. Edward F. Rodgers, Director of Legal Services and Chief Administrative Law Judge, Department of Consumer and Industry Services (CIS). Mr. Rodgers began his testimony by noting that CIS conducts a wide range of contested-case hearings. The approximate number of such hearings conducted within CIS's hearings division in fiscal year 1995 exceeded 20,000. This figure includes hearings before the Tax Tribunal, the Liquor Control Commission, the Insurance Bureau, and the Financial Institutions Bureau, and CIS hearings division responsible for wage and hour and MIOSHA complaints, but does not include workers' compensation hearings. Mr. Rodgers estimates that the CIS Office of Legal Services alone will conduct between 2,000-2,500 hearings in 1997, many of which are multi-day, multi-party hearings.

In response to a question from Commissioner George Ward regarding the

number of CIS administrative determinations that are appealed to the circuit court, Mr. Rodgers estimates that roughly 75 percent (15,000) of those determinations are appealed to circuit court.

Turning to the proposed MAPA, Mr. Rodgers stated that although he personally is pleased with the proposed MAPA, there are areas of concern that CIS has with the proposal. In addition to the recommendations listed in the Department's letter to the Commission of January 15, 1997 (Attachment 2), Mr. Rodgers highlighted two items in the proposed MAPA that CIS would like to see modified.

First, in connection with the administrative procedure known as a "proposal for decision" or PFD, an administrative law judge (ALJ) conducts a hearing, at the conclusion of which the ALJ will prepare a proposal for decision that contains findings of fact and conclusions of law. The PFD is in turn forwarded to a supervisory Board or Commission that makes the final decision on the basis of the ALJ's PFD. Section 405 of the proposed MAPA does not make clear that the PFD procedure remains in effect. Section 405 should be redrafted to make clear that the PFD procedure is valid and still may be used.

Second, transcripts of administrative hearings before an ALJ normally are not prepared in the ordinary course. That practice is universally followed when no exceptions are filed to the PFD. Transcripts will be prepared in three instances: (1) one of the parties requests it; (2) the hearing is a complex, multi-day proceeding, so that the ALJ will need to review a transcript to prepare the PFD; and (3) if the final decision is appealed and the reviewing court requests a transcript. However, in a recent Court of Appeals' decision, *Hicks v. Board of Medicine*, the court stated that the complete record should include a transcript of the administrative proceedings, even though in *Hicks* no exceptions were filed to the PFD. Mr. Rodgers believes that if transcripts are required routinely, it will wreck the efficiencies in time and money of the current PFD process, which at present are completed within 90 days in 94 percent of all cases. The cost of preparing transcripts could run from $5-$10 million annually. If *Hicks* is not reversed, then the proposed MAPA needs to legislatively overrule it through an appropriate amendment to Section 405. Commissioner Maura Corrigan suggested that a way around *Hicks* is for the parties to stipulate that a transcript is not necessary at the appeals stage. Mr. Rodgers stated that CIS has requested the Attorney General to secure such stipulations on a routine basis.

The second witness was Ms. Nancy Lukey, chairperson of the Administrative Law Section of the State Bar of Michigan. The Administrative Law Section has a diverse membership of over 400 persons, many of whom are directly involved in administrative law practice for private-sector and public-sector employers. The Section

has created an *ad hoc* committee charged with the task of reviewing the proposed MAPA and submitting comments and recommendations. The Section is delighted that the APA has been identified for revision, but has concerns about certain provisions in the proposed MAPA.

First, the Section believes that the rulemaking procedures appear to be too limited insofar as opportunities for active participation by interested persons is concerned. For example, affected businesses or affected classes of licensees might have concerns about a proposed rule, but might be unable to participate adequately in the rulemaking process under the proposed MAPA.

Second, the distinction made in the proposed MAPA between procedural and substantive rules, and the different rulemaking procedures that govern them, is a source of concern given the conceptual difficulty of distinguishing between the two categories of rules. Thus, for example, an agency could adopt a nominally procedural rule without notice and comment, and affect persons' substantive rights in a profound way. In response to an observation from Professor Croley that an agency decision that a particular rule is procedural, rather than substantive, would be subject to judicial review for arbitrariness or capriciousness, Ms. Lukey noted that affording some kind of notice and an opportunity to comment on procedural rulemaking would be desirable. Recourse to the courts on these questions is not desirable because of the time and expense.

Third, the form and sufficiency of notice that is provided in the proposed MAPA for different types of rulemaking are of concern to the Section. For example, notice via the Internet as provided for in the proposed MAPA is desirable, but it must be recognized that not everyone has Internet access. In addition, the notice that is required for formal and informal hearings may not be adequate. Ms. Lukey stated that newspaper notice of agency rulemaking is preferable until Internet access becomes more widespread.

Ms. Lukey expects the *ad hoc* committee to have written comments and recommendations on the proposed MAPA completed by the end of the summer.

The third witness to testify before the Commission was Ms. Elaine Charney, Director of the Driver License Appeal Division, Department of State. Mr. Charney's Division handles approximately 20,000 appeals annually. The Division also is responsible for handling another 6,000 annual driver license restoration appeals in the circuit court. The Hearings Division within the Department of State hears complaints about vehicle repairs and related motor vehicle complaints.

Ms. Charney's major concern with the proposed MAPA is its failure to deal with so-called high-volume appeals in a timely and cost-efficient manner. Ms. Charney recommends a special section, in addition to Section 402(1) in the proposed MAPA, that deals with driver license decisions. Many of the decisions reached by Ms. Charney's Division are ministerial in nature, being based on past convictions that were rendered in district or circuit court. To have 20,000 cases subject to the procedural formalities of the proposed MAPA, on top of the high volume of cases handled by the Family Independence Agency and the Michigan Employment Security Commission, would result in a crushing workload for the affected state agencies. In short, special provision should be made for high-volume cases that accommodates the due process rights of the individual and the interests of the agency in processing cases in an timely and cost-efficient manner.

Mr. McLellan invited agencies that handle high-volume cases to contact the Commission to explain to the Commission how the high-volume caseload process works and to share with the Commission problems that the proposed MAPA poses for them.

The fourth witness was Ms. Laurie Phillips, a private citizen interested in the work of the Commission. Ms. Phillips is a researcher. Her major concern is with a proliferation of administrative rules that may, in the end, be ignored by the agencies. Training of agency employees to familiarize them with their departmental and agency rules takes on added importance.

The fifth witness was Mr. Terrence Haggerty, appearing on behalf of the Standing Committee on Appellate Court Administration, State Bar of Michigan. Mr. Haggerty stated that the Committee has a number of concerns with the proposed MAPA, but its overriding concern is with the proposal to place all judicial review of agency decisions in the Court of Appeals. The precise impact this proposal will have on the Court of Appeals' workload is unknown, but in the last year in which statistics were available, the circuit courts heard 6,300 administrative agency appeals. On the basis of this figure, it can safely be predicted that the proposal, if adopted, would have an appreciable impact on the Court of Appeals.

Noting the inconsistent testimony regarding the number of administrative appeals to circuit court (approximately 15,000 appeals according to Mr. Rodgers, versus 6,300 administrative appeals according to Mr. Haggerty), Commissioners Corrigan and McLellan inquired as to the source of Mr. Haggerty's statistics. Mr. Haggerty could not identify the source.

The Committee on Appellate Court Administration estimates that even if one-

half of these 6,300 appeals were taken to the Court of Appeals, that would mean that 3,150 appeals would be taken to the Court of Appeals. In 1995, Mr. Haggerty noted, the Court of Appeals heard 187 appeals from the circuit courts involving administrative agency action. Mr. Haggerty is deeply concerned that the diligent effort that the Court of Appeals has made to eliminate its case backlog will be destroyed in one fell swoop if the judicial review provisions of the proposed MAPA are enacted. A 2 ½-year delay was reduced to one year. The Committee fears that the backlog that is under control will once again increase. The Committee prefers that appeals from administrative agencies not be in the Court of Appeals in the first instance. However, if they are, then the Legislature would have to provide additional funding for the Court of Appeals to handle the influx of new cases.

At least one additional problem Mr. Haggerty's Committee has with the proposed MAPA is the lack of harmonization between language used in the proposed MAPA and language used in the corresponding court rules. For example, Section 501 of the proposed MAPA refers to a petition for review, whereas Michigan Court Rules use the term "claim of appeal." These differences and inconsistencies would introduce unnecessary confusion for practitioners. They should be eliminated.

Commissioner Corrigan observed that it is important to have accurate statistics on the number of judicial appeals from administrative agency action within the state.

The sixth and final witness was Mr. Jeffrey Butler, an Assistant Attorney General appearing in his personal capacity. Mr. Butler echoed most of the concerns expressed by Mr. Haggerty. One of the strengths of the proposed MAPA are its well-articulated standards of review for various types of agency adjudication. An annual statistical supplement to the state court's annual report contains statistics on court caseload. In 1994, according to that annual report, there were 6,540 new civil appeals filed in the circuit courts from administrative agencies. That statistic is probably underinclusive, according to Mr. Butler, because it does not include declaratory judgment actions brought to have an agency rule declared invalid. Commissioner Corrigan noted that statistic does not indicate what constitutes "an agency appeal." For example, are high-volume cases included in this number? If so, what percentage of administrative agency appeals involve, for example, driver's license appeals or other high-volume cases?

If anything, Mr. Butler believes that the 6,540 number is low. But using that number as the basis for estimating the increase in the Court of Appeals' caseload, it would increase 50 percent from its current volume. A related issue is the one of how the Court of Appeals should spend its time and the State's money. Under current law, the Court has the discretion to deny review of cases involving substantial money

judgments, and yet under the proposed MAPA, review in the Court of Appeals of agency action would be as a matter of right.

Mr. Butler questioned the wisdom of using Court of Appeals' resources to handle appeals from agency action in the first instance. Besides making demands on the time of three judges, the resources of legal and clerical support staff will also be expended. Mr. Butler estimated that the time of 12 persons working for and on the Court of Appeals would be devoted to every administrative agency appeal.

Finally, Mr. Butler was concerned that Section 505 of the proposed MAPA left no room for the operation of the harmless error rule.

Commissioner Corrigan stated that she remains adamantly opposed to any proposal that makes the Court of Appeals the court of first instance in administrative agency appeals.

Professor Croley and Michael Zimmer, Director of the Office of Regulatory Reform, conducted a survey of Michigan agencies to determine the frequency of agency rulemaking and judicial review of agency decisions and orders. The results of that survey are attached to this Report. The Commission also prepared a concordance that compares the 1997 Croley proposal, the 1989 LeDuc proposal, and the current version of MAPA. That concordance follows this Report. Work on the proposed MAPA continues. It is the intention of the Commission to have a bill introduced in 1998.

1997 Survey of State Agencies Regarding

Rulemaking

and Adjudication

SURVEY QUESTIONNAIRE FOR MICHIGAN STATE AGENCIES' REGULATORY AFFAIRS OFFICERS:

Name of Agency: _____

Name of Person Answering this Questionnaire: _____

Rulemaking:

1. On average, approximately how much time does your agency require to issue a rule, from start to finish—that is, from the time of filing a request for permission to initiate a rulemaking, to the time of the rule's certification (emergency rules excluded)?

2. What methods does your agency use, if any, for reviewing its existing rules? For example, does your agency periodically review rules it has issued in the past to ensure they are still necessary, that they are strict enough, that they are not too strict, etc.?

3. When developing a rule, does your agency attempt to solicit participation from those parties who would most likely be affected by the rule, and those parties who would most likely benefit from it? If yes, how?

Adjudication:

4. Approximately how many contested case proceedings did your agency conduct in the last year?

5. Of those, how many would you consider to be "high volume" proceedings, concerning matters such as individual driver's licenses, for example?

6. Of all the contested case proceedings your agency conducted last year, approximately how many did it conduct under the Michigan Administrative Procedures Act (MAPA)? Approximately how many did it conduct under different statutory authority or different statutory requirements? Please identify statutes other than the MAPA under which your agency carries out contested case proceedings.

7. Approximately what percentage of your agency's contested case proceedings are presided over by a hearing officer/administrative law judge with legal training? What percentage are presided over by a hearing officer/administrative law judge with no legal training?

8. How many hearing officers/administrative law judges does your agency have or use?

9. Do the hearing officers who preside over contested cases for your agency make "final"decisions (which may be subject to appeal within your agency), or instead "proposed" decisions or "recommendations" that are turned over to some higher body within your agency? If this depends on the nature or subject matter of a contested case, for which proceedings does your agency's hearing officers make final decisions, and for which proceedings does your agency's hearing officers make proposals/recommendations?

Judicial Review:

10. How many of your agency's rules were challenged before the Circuit Court in the last year? How many of your agency's rules are challenged in court in a typical year?

11. How, if at all, does the possibility of judicial review affect the way in which your agency develops its rules?

12. How many of your agency's contested case proceedings were appealed to the Circuit Courts in the last year? How many of your agency's contested case proceedings are challenged in court in a typical year?

13. Under what statutory authority, other than the MAPA, may a private party seeking to challenge one of your agency's rules, or the outcome in one of your agency's contested case proceedings, bring suit?

Miscellaneous:

14. If you think any other information, explanation, or qualification would be pertinent to understanding your answers to the above questions, please provide such information as well.

Partial Results of Agency Survey

Agency:	#CCs	non-APA hearings?	#high-vol. hearings	#JR	non-APA JR stat.?
Dept Agriculture:	3	no	0	1	no
Dept Civ. Rights:	30-35	no	0	20-26	yes
Dept Com. Health:	418	no	?	3	yes
Dept Con & Ind Ser					
Off. Hearings:	1,241	no	248	6	yes
Off. Leg. Serv.:	792	no	713	57	no
Dept Corrections:	83,770	yes (all APA-exempt)	83,770	2,109	yes
Dept Education:	69	no	3	2	no
Dept Mgmt.&Bud.:	88	no	?	22	no
Dept Nat. Res.:	0	0	0	0	no
Dept State:	15,464	yes (15,448 non-APA)	15,448	7,100	yes (many)
Dept State Police:	0	0	0	0	no
Dept Transportation:	120	no	80	12	?
Dept Treasury:	1,151	yes (1,139 non-APA)	0	0	?
Lottery:	1	no	0	0	no
Jobs Commission:	0	0	0	0	no
Family Ind. Agency:	17,088	yes, most	16,928	53	yes

#CC	= number of agency's adjudications in a year
non-APA hearings?	= whether agency conducts adjudications through procedures other than prescribed by APA
#high-vol. hearings	= number of adjudications that are routine, short, high-volume procedures
#JR	= number of agency decisions challenged in a court in a year
non-APA JR stat.?	= whether judicial challenges to agency's decisions are brought under statutes besides APA

COMPARISON OF 1997 CROLEY PROPOSAL,

1989 LEDUC PROPOSAL,

AND THE CURRENT VERSION OF MAPA

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
AN ACT to provide for a comprehensive and exhaustive system of administrative decisionmaking and judicial review thereof; to provide for the processing, promulgation, and compilation of agency rules and other decisions; to provide for procedures for agency rulemaking and agency adjudications, including licensing; to provide for legislative oversight of agency decisionmaking; to provide for judicial review of agency action in fulfillment of Article 6, §28 of the Constitution; to provide for the printing, publishing, and distribution of the Michigan Register and Michigan Administrative Code; to repeal certain acts or parts of acts; and for other purposes.		AN ACT to provide for the effect, processing, promulgation, publication, and inspection of state agency rules, determinations, and other matters; to provide for the printing, publishing, and distribution of the Michigan register; to provide for state agency administrative procedures and contested cases and appeals from contested cases in licensing and other matters; to provide for declaratory judgments as to rules; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date.
		24.201. Short title
This act shall be known by and may be cited as the "Administrative Procedure Act of 1998."	Sec. 1. This act shall be known and may be cited as the "administrative procedures act of 1990".	Sec. 1. This act shall be known and may be cited as the "administrative procedures act of 1969".
Sec. 101(1). "Adjudication" 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 following a formal, 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 deemed to be a continuous proceeding as though before a single agency.	Sec. 2(a). "Adjudication" means the agency process for the promulgation of an order.	**No provision.**
Sec. 101(2). "Administrative law judge" means a person designated by statute to conduct an adjudication, or a hearing	**No provision.**	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
authorized by an agency to conduct an adjudication.		
No provision.	(b) "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.	Sec. 3. (1). Same.
(3). "Adoptee" means a child who is to be or who is adopted.	Sec. 103. (2). Same.	Sec. 103. (1). Same
(4). "Agency" means any 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, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, or other association or facility formed under Act No. 218 of the Public Acts of 1956 as a nonprofit organization of insurer members.	Sec. 2 (c) Same.	Sec. 3 (2). Same.
(5). "Agency action" means any agency rule, order, or other decision, affirmative or negative.	(d). "Agency action" means the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or the failure to act.	**No provision.**
No provision.	(e). "Agency proceeding" means rulemaking, adjudication, or licensing, including ratemaking and contested cases.	**No provision.**
No provision.	(f). "Approval of a rule" means the actions described in chapter 3	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
	substantive rules through the committee or through concurrent resolution.	
No provision.	(h). "Contested case" means an adjudication, 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 statute 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 deemed to be a continuous adjudication as though before a single agency.	(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 deemed to be a continuous proceeding as though before a single agency.
No provision.	(g) "Committee" means the joint committee on administrative rules.	(4) Same.
(6). "Costs and fees" means the normal costs incurred after a party to an adjudication—other than an adjudication that is settled, an adjudication in which a consent agreement is entered into, or any proceeding for establishing a rate or approving, disapproving, or withdrawing approval of a form—has received notice of a hearing. Costs and fees include all of the following: (a) the reasonable and necessary expenses of expert witnesses as determined by the administrative law judge; (b) the reasonable costs of any study, analysis, engineering report, test, or project which is determined by the administrative law judge to have been necessary for the preparation of a party's case; and (c) reasonable and necessary attorney or agent fees including those for purposes of appeal.	**No provision.**	Sec. 122. (2) "Costs and fees" means the normal costs incurred, after a party has received notice of an initial hearing under section 71(2), 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 which 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.

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
(7). "Court" means the Michigan Court of Appeals. [or Circuit Court]	(i) "Court" means the circuit court unless otherwise indicated.	(5) "Court" means the circuit court.
(8). "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria: (a) it originated before the person became 18 years of age; (b) it has continued since its origination or can be expected to continue indefinitely; (c) it constitutes a substantial burden to the impaired person's ability to perform normally in society; and (d) it is attributable to mental retardation, autism, or any other condition of a person found related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.	Sec. 76(1). Same as Current Law.	Sec. 75a. (1) As used in this section: (a) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria: (i) It originated before the person became 18 years of age. (ii) It has continued since its origination or can be expected to continue indefinitely. (iii) It constitutes a substantial burden to the impaired person's ability to perform normally in society. (iv) It is attributable to mental retardation, autism, or any other condition of a person found related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
(9). "Emergency Rule" means a substantive rule authorized under Section 309 of this Act, promulgated following neither the ordinary formal or informal rulemaking procedures used to develop substantive rules.	**No provision.**	**No provision.**
(10). "Formal Order" means any agency decision other than a rule, made following an adjudication under Section 404 or Section 408 of this Act.	**No provision.**	**No provision.**
(11). "Formal Rule" means a substantive rule promulgated following a public hearing required by statute or a hearing deemed in the public interest by an agency.	**No provision.**	**No provision.**

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(12). "High-Volume Adjudication" means an adjudication carried out under Section 408 of this Act.		
(13). "Housekeeping Rule" means a rule relating only to agency management, personnel, organization, operation, or other internal agency matters not directly affecting the substantive rights or obligations of parties outside of the agency.	(j) "Housekeeping rule" means a rule which describes the internal organization, operation, management, and practices of an agency, including instructions or guidelines to employees regarding the scope and exercise of their functions.	**No provision.**
(14). "Informal Order" means any agency decision other than a rule, not made following an adjudication under Section 404 of this Act.	**No provision.**	**No provision.**
(15). "Informal Rule" means a substantive rule promulgated following notice and comment processes.	**No provision.**	**No provision.**
(16). "Interpretive Rule" means a rule expressing an agency's understanding of a statutory term the meaning of which the legislature did not intend an agency to supply, or the meaning of an undefined term of a substantive rule.	(k) "Interpretative rule" means a rule which expresses the formal opinion of an agency of the meaning of a statute or of another rule, which meaning the agency intends to follow in the execution or administration of its designated functions.	(6) "Guideline" means an agency statement or declaration of policy which the agency intends to follow, which does not have the force or effect of law, and which binds the agency but does not bind any other person. **24.205. Definitions; license, licensing, party, person, processing of a rule, promulgation of a rule**
(17). "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 registration issued under Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws.	(l) "License" means the whole or part of an agency permit, certificate, approval, registration, charter, franchise, 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 Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws.	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 Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

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(18). "Licensing" includes agency adjudication involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.	(m) "Licensing" means agency process involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.	(2) "Licensing" includes agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license.
No provision.	(n) "Michigan administrative code" means the compilation of rules required to be kept pursuant to Act No. 193 of the Public Acts of 1970, being sections 8.41 to 8.48 of the Michigan Compiled Laws.	**No provision.**
No provision.	(o) "Michigan register" means the publication described in section 21.	(3) "Michigan register" means the publication described in section 8.
(19). "Negotiated Rulemaking" means the process of convening a group of parties interested in the development of a proposed agency rule for the purpose of drafting the text of the proposed rule prior to the commencement of ordinary rulemaking processes.	**No provision.**	**No provision.**
(20). "Order" means any agency decision other than a rule, including but not limited to declaratory orders, judicial or quasi-judicial decisions affecting private rights, and decisions relating to the issuance, amendment, conditioning, suspension, and revocation of a license.	(p) "Order" means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking, including licensing and ratemaking. This definition shall apply regardless of the denomination or characterization of the action by the agency.	**No provision.**
(21). "Party" means an individual, partnership, association, corporation, governmental subdivision, or public or private organization of any kind.	(q) "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, including a person or agency admitted for a limited purpose or under limited conditions.	(4) "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.

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(22). "Party to an adjudication" means a person or agency named, admitted, or properly seeking and entitled or permitted to be admitted, as a party to an agency's formal adjudicative hearing and related proceedings.	(r) "Person" means an individual, partnership, association, corporation, governmental subdivision, or public or private organization or authority of any kind other than the agency engaged in the particular proceeding ~~processing of a rule, declaratory ruling, or contested case~~.	(5) "Person" means an individual, partnership, association, corporation, 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.
For the purposes of the costs and fees provisions of Section 406 of Chapter 4, however, "party to an adjudication" does not include any of the following: (a) an individual whose net worth was more than $700,000.00 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 $3,500,000.00 at the time the contested case was initiated and which is not either exempt from taxation pursuant to section 501(c)(3) of the internal revenue code or a cooperative association as defined in section 15(a) of the agricultural marketing act, 12 USC 1141j(a); or (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. 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.	**No provision.**	Sec. 122. (3) "Party" means a party as defined in section 5(4), 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 which is not either exempt from taxation pursuant to section 501(c)(3) of the internal revenue code or a cooperative association as defined in section 15(a) of the agricultural marketing act, 12 U.S.C. 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.

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(23). "Prevailing party" means the party prevailing on the entire record in an action involving only one issue or count stating only one cause of action or defense, or the party prevailing as to each remedy, issue, or count an action involving several remedies, or issues or counts which state different causes of actions or defenses.	**No provision.**	Sec. 122. (5) "Prevailing party" means as follows: (a) In an action involving several remedies, or issues or counts which 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.
(24). "Procedural Rule" means a rule specifying the procedures that an agency and other parties shall follow wherever agency decisionmaking processes are not prescribed by this Act or other statutes.	(s) "Procedural rule" means a rule which establishes the methods by which the agency will execute its designated functions in regard to the contact it has with persons and describes the procedures, practices, forms, applications, guidelines, instructions, and other requirements which persons must follow in the execution or administration of its designated functions.	**No provision.**
No provision.	(t) Same as Current Law.	(6) "Processing of a rule" means the action required or authorized by this act regarding a rule which is to be promulgated, including the rule's adoption, and ending with the rule's promulgation.
No provision.	(u) Same as Current Law.	(7) "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.
No provision.	(v) "Relief" means (i) a grant of money, assistance, license, authority, exemptions, exceptions, privilege, or remedy; (ii) the recognition of a claim, right, immunity, privilege, exemption, or exception; or (iii) the taking of other action on the application or petition of, and beneficial to, a person.	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law 24.207. Rule, defined
(25). "Rule" means an agency, statement, standard, policy, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission thereof, but does not include any of the following:	(w) "Rule" means an agency regulation, statement, standard, policy, guideline, ruling, or instruction of general applicability ~~that~~ which implements or applies law enforced or administered by the agency, interprets a statue or rule of the agency, or that prescribes the organization, procedure, or practice or external requirements of the agency, or describes the internal organization, operation, management, and practices of the agency. A rule includes the amendment, suspension, or rescission thereof, ~~the law enforced or administered by the agency. Rule~~ but does not include any of the following:	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:
(b) a decision of the state administrative board;	(i) A resolution or order of the state administrative board.	(a) A resolution or order of the state administrative board.
(c) a formal opinion of the attorney general;	(ii) A formal opinion of the attorney general or any embodiment of legal advice provided by the attorney general to an agency or its employees.	(b) A formal opinion of the attorney general.
(d) a decision establishing or fixing rates or tariffs;	(iii) A rule or order establishing or fixing rates or tariffs.	(c) A rule or order establishing or fixing rates or tariffs.
(e) a decision pertaining to game and fish and promulgated under part 411 (protection and preservation of fish, game, and birds) of the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, being sections 324.41101 to 324.41105 of the Michigan Compiled Laws, part 487 (sport fishing) of Act No. 451 of the Public Acts of 1994, being	(iv) A rule or order pertaining to game and fish and promulgated under part 411 (protection and preservation of fish, game, and birds) of the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, being sections 324.41101 to 324.41105 of the Michigan Compiled Laws, part 487 (sport fishing) of Act No. 451 of the Public Acts of 1994, being sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife	(d) A rule or order pertaining to game and fish and promulgated under part 411 (protection and preservation of fish, game, and birds) of the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, being sections 324.41101 to 324.41105 of the Michigan Compiled Laws, part 487 (sport fishing) of Act No. 451 of the Public Acts of 1994, being sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife

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sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife conservation) of Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws;	sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife conservation) of Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws;	sections 324.48701 to 324.48740 of the Michigan Compiled Laws, and part 401 (wildlife conservation) of Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws.
(f) 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;	(v) 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.	(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.
(a) an order;	(vi) A determination, decision, or order in a contested case.	(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;	(vii) An intergovernmental, interagency, or intra-agency memorandum, directive, or communication ~~that~~ which does not affect the rights or, or procedures and practices available to, the public.	(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 informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory;	(viii) Any informal material not included within the definitions of substantive, interpretative, procedural, or housekeeping rules.	(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.
	(ix) A declaratory order ~~ruling~~ or other disposition of a particular matter as applied to a specific set of facts involved.	(i) A declaratory ruling or other disposition of a particular matter as applied to a specific set of facts involved.
	(x) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.	(j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.
(i) unless another statute requires a rule to be promulgated under this act, a rule or policy that state correctional facility and does not directly affect other members of	(xi) Unless another statute requires a rule to be promulgated under this act, a rule or policy which ~~that~~ only concerns the inmates of a state correctional facility or those committed to the custody of the state correctional	(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

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the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections;	public.~~, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections.~~	the public, except that a rule that only concerns inmates which was promulgated before December 4, 1986, shall be considered a rule and shall remain in effect until rescinded but shall not be amended. As used in this subdivision, "state correctional facility" means a facility or institution that houses an inmate population under the jurisdiction of the department of corrections.
(j) all of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws:	(xii) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws:	(l) All of the following, after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws:
(i) the designation, deletion, or revision of covered medical equipment and covered clinical services;	(A) The designation, deletion, or revision of covered medical equipment and covered clinical services.	(i) The designation, deletion, or revision of covered medical equipment and covered clinical services.
(ii) certificate of need review standards;	(B) Certificate of need review standards.	(ii) Certificate of need review standards.
(iii) data reporting requirements and criteria for determining health facility viability;	(C) Data reporting requirements and criteria for determining health facility viability.	(iii) Data reporting requirements and criteria for determining health facility viability.
(iv) standards used by the department of public health in designating a regional certificate of need review agency; and	(D) Standards used by the department of public health in designating a regional certificate of need review agency.	(iv) Standards used by the department of public health in designating a regional certificate of need review agency.
(v) the modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of Act No. 368 of the Public Acts of 1978, being section 333.22210 of the Michigan Compiled Laws;	(E) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of Act No. 368 of the Public Acts of 1978, being section 333.22210 of the Michigan Compiled Laws.	(v) The modification of the 100 licensed bed limitation for short-term nursing care programs set forth in section 22210 of Act No. 368 of the Public Acts of 1978, being section 333.22210 of the Michigan Compiled Laws.

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(k) a policy developed by the family independence agency under section 6(3) of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, 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; or	**No provision.**	(m) A policy developed by the family independence agency under section 6(3) of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, 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.
(l) a policy developed by the family independence agency under section 6(4) of Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds.	**No provision.**	(n) A policy developed by the family independence agency under section 6(4) of Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, to implement requirements that are mandated by federal statute or regulations as a condition of receipt of federal funds. (o) Until the expiration of 12 months after the effective date of this subdivision, a regulation issued by the family independence agency under section 6(2) of Act No. 280 of the Public Acts of 1939, being section 400.6 of the Michigan Compiled Laws, setting standards and policies for the administration of programs under that act. Upon the expiration of 12 months after the effective date of this subdivision, regulations described in this subdivision are not binding and effective unless processed as emergency rules under section 48 or promulgated in accordance with this act. This subdivision does not apply to policies permanently exempted under subdivisions (m) and (n).

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(26). "Rulemaking" means the process of establishing a rule, including the action required or authorized by this act and culminating with the rule's promulgation. Rulemaking consists of notice and comment procedures, for proposed informal substantive rules, as well as public hearings, for proposed formal substantive rules as required by statute or as deemed in the public interest by the relevant agency. Rulemaking consists also of agency consideration of responses generated by notice and comment or public hearings, agency provision of information required in conjunction with a proposed rule, such as but not limited to a small business impact statement, and promulgation of final rules together with their accompanying concise general statement explaining why a final rule took the form it did.	(x) "Rulemaking" means the agency process for formulating, amending, or rescinding a rule.	**No provision.**
No provision.	(y) "Sanction" means (i) the prohibition, requirement, limitation, or other condition affecting the freedom of a person; (ii) the withholding of relief; (iii) the imposition of penalty or fine; (iv) the destruction, taking, seizure, or withholding of property; (v) the assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (vi) the requirement, revocation, or suspension of a license; or (vii) the taking of other compulsive or restrictive action.	**No provision.**

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(27). "Substantive Rule" means a formal or informal rule other than a housekeeping rule, a procedural rule, or an interpretive rule. A substantive rule is binding upon relevant parties, its observance is mandatory, and a violation of a substantive rule is itself sufficient to establish a violation of a statute or regulation.	**No provision.**	**No provision.**
Section 102. Application; Effects on Other Laws.		**24.311. Repealer**
(1). Act No. 306 of the Public Acts of 1969, as amended, is hereby repealed.	Sec. 6. Same as Croley Proposal.	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.
		24.312. References to prior law
(2). A reference in any other law to Act No. 306 of the Public Acts of 1969, as amended, is deemed to be a reference to this act.	Sec. 7. Same as Croley Proposal.	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.
(3). Section 600.631 of the Michigan Compiled Laws is hereby repealed.		**24.313. Effective date**
(4). This act is effective January 1, 1998, and except as to proceedings then pending applies to all agencies and agency actions not expressly exempted.	Sec. 8. Parallels Croley Proposal.	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.

1997 Croley Proposal	1989 LeDuc Proposal	Current Law **24.314. Processing and publication of rules**
(5). When an agency has completed any or all of the processing of a rule pursuant to Act No. 306 of the Public Acts of 1969 as amended, before January 1, 1998, 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. (6). This act shall constitute the exclusive method for judicial review of a decision of any state agency, as defined in Subsection 101(4), including but not limited to final agency decisions for which judicial review is prescribed by Article VI, Section 28, of the Michigan Constitution, unless another statute explicitly provides for judicial review in a manner inconsistent with Chapter 5 of this act. (7). This act shall govern all agency decisionmaking processes for every state agency, as defined in Subsection 101(4), except as provided in Section 103, unless another statute explicitly requires a decisionmaking procedure inconsistent with Chapters 3 and 4 of this act.	Sec. 9. Same as Croley Proposal.	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.

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Section 103. Exceptions.		**24.315. Application**
(1). Chapter 3 and Section 402(3) do not apply, in whole or in part, 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 the certification date, as that date is defined in section 2a of Act No. 427 of the Public Acts of 1984, being section 38.1502a of the Michigan Compiled Laws.	No provision.	Sec. 115. (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 38.1510 to 38.1555 of the Michigan Compiled Laws, on and after the certification date. As used in this subsection, "certification date" means that term as defined in section 2a of Act No. 427 of the Public Acts of 1984, being section 38.1502a of the Michigan Compiled Laws.
(4). Chapters 4 and 5 do not apply, in whole or in part, to adjudications conducted under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.	Sec. 10(1). Chapters 4, 5, and 6 shall not apply to proceedings under the workers' 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.	(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, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.
(2). Chapter 4 does not apply, in whole or in part, to adjudications 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.	Sec. 10(2). Parallels Croley Proposal.	(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.

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(3). Chapter 4 does not apply, in whole or in part, to adjudications conducted by the Secretary of State under chapters 3 or 6 of the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.301 to 257.329 and 257.601 to 257.750 of the Michigan Compiled Laws, or part 801, 811, and 821 of the Natural Resources and Environmental Protection Act, as amended, Act No. 451 of the Public Acts of 1994, being sections 324.80101 to 324.80199 and 324.81101 to 324.82159 of the Michigan Compiled Laws.		
(5). Chapter 5 does not apply, in whole or in part, to adjudications 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.		
Section 104. General Provisions on Rules and Rulemaking: Continuation of Existing Rules; Successor Agencies; Recision; Amendment; Definitions of Terms; Discrimination; Violations; Adoption by Reference; Submission to Legislative Service Bureau and Attorney General; Final Promulgation; Transmittal to Legislature.		**24.231. Continuance of existing rules; amendment or rescission of rules, effect**
(1). **Continuation of Existing Rules.** Rules which became effective before the effective date of this Act continue in effect until amended or rescinded.	Sec. 4(1). Rules which became effective before July 1, 1990, continue in effect until amended or rescinded.	Sec. 31. (1) Rules which became effective before July 1, 1970 continue in effect until amended or rescinded.

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(2). **Successor Agencies.** Same as Current Law.	Sec. 4(2). Same as Current Law.	Sec. 31(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). **Amendment and Recision.** The rescission of a rule does not revive a rule which was previously rescinded. The amendment or rescission of a valid rule does not defeat or impair a right accrued, or affect a penalty incurred, under the rule. Except in the case of the amendment of rules concerning inmates, a rule may be amended or rescinded by another rule or as a result of an act of the legislature.	Sec. 4(3)-(5). Same as Current Law.	(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.

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(4). **Meaning of Terms.** Same as Current Law.	Sec. 5(1). Same as Current Law.	Sec. 32(1). Definitions of words and phrases and rules of construction prescribed in any statute, and which are made applicable to all statutes of this state, also apply to rules unless clearly indicated to the contrary.
(5). **Nondiscrimination.** Same as Current Law.	Sec. 5(2). Same as Current Law.	(2) A rule or exception to a rule shall not discriminate in favor of or against any person, and a person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.
(6). **Violations not Crimes.** Same as Current Law.	Sec. 5(3). Same as Current Law.	(3) The violation of a rule is a crime if and only if 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.
(7). **Adoption by Reference.** Same as Current Law.	Sec. 5(4). Same as Current Law.	(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 which 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

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		24.245. Approval, disapproval, and adoption of rules
(8). **Submission to Legislative Service Bureau and Attorney General.** Before proposing a rule, the proposing agency shall submit its proposed rule for prompt approval as to form by the Legislative Service Bureau, and for prompt approval for legality by the Department of the Attorney General, and for prompt approval by the Governor's Office of Regulatory Reform.	Sec. 45(1). Same as Current Law.	Sec. 45. (1) The legislative service bureau promptly shall approve a proposed rule if the legislative service bureau considers the proposed rule to be proper as to all matters of form, classification, arrangement, and numbering. The department of attorney general promptly shall approve a proposed rule if the department considers the proposed rule to be legal.
(9). **Promulgation of Final Rules.** To promulgate a final substantive rule, an agency shall file in the office of the secretary of state 3 copies of the rule, along with record of the rule's approval by the Legislative Service Bureau, the Attorney General, and the Office of Regulatory Reform as required by Subsection (8). The secretary of state shall endorse the date and hour of filing of rules on the 3 copies and shall maintain a file containing 1 copy with its attached certificates for public inspection. No further record of the rules is required to be kept prior to their inclusion in the next printing of the *Michigan Administrative Code* or supplement thereto. Except in case of an emergency rule authorized under Section 308, 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 on the date of its publication in the *Michigan Administrative Code* or a supplement thereto, subject to the introduction of a bill of rejection suspending the rule's effective date for sixty days.	Sec. 45(2). Except as provided in subsection (13), after publication of the proposed substantive rule in the Michigan register and after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall transmit by letter to the committee copies of the rule bearing certificates of approval from the legislative service bureau and the department of attorney general and copies of the rule without certificates. The agency transmittal shall be received by the committee within 2 years after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under subsection (~~11~~ 8). ~~The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the committee.~~	(2) Except as provided in subsection (13), after publication of the proposed rule in the Michigan register and after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall transmit by letter to the committee copies of the rule bearing certificates of approval from the legislative service bureau and the department of attorney general and copies of the rule without certificates. The agency transmittal shall be received by the committee within 2 years after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under subsection (11). The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the committee. [*See infra* for regulatory impact statement provisions.] 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 15 days after the

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		date of its promulgation, or if a date is not so fixed then on the date of its publication in the Michigan administrative code or a supplement thereto.
(10). **Transmittal to Legislature.** The secretary of state shall transmit or mail forthwith, after copies of final rules are filed in his or her office, copies on which the day and hour of such filing have been indorsed to the Legislative Service Bureau for publication in the *Michigan Administrative Code* and to the secretary of the senate and the clerk of the house of representatives for distribution 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 one copy to each member of the legislature at his home address. The Secretary of the Senate and Clerk of the House of Representatives shall present the rules to the Senate and the House of Representatives.	Sec. 49(1). Same as Current Law.	Sec. 49. (1) The secretary of state shall transmit or mail forthwith, after copies of rules are filed in his office, copies on which the day and hour of such filing have been indorsed, as follows: (a) To the secretary of the joint committee on administrative rules and the legislative service bureau. (b) To the secretary of the senate and the clerk of the house of representatives for distribution 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 1 copy to each member of the legislature at his 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.

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Section 105. General Provisions on Orders and Formal Adjudication.		**24.286. Official record of hearing, contents; record of oral proceedings**
(1). Agencies shall prepare a record of all formal adjudications carried out pursuant to Section 404, which shall include summaries of all material:	Sec. 83. (1) An agency shall prepare an official record of a hearing which shall include:	Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include:
(a) notices, pleadings, motions and intermediate rulings;	(a) Notices, pleadings, motions and intermediate rulings.	(a) Notices, pleadings, motions and intermediate rulings.
(b) questions and offers of proof, objections, and rulings thereon;	(b) Questions and offers of proof, objections and rulings thereon.	(b) Questions and offers of proof, objections and rulings thereon.
(c) evidence presented;	(c) Evidence presented.	(c) Evidence presented.
(d) matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;	(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.	(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.
(e) findings and exceptions; and	(e) ~~Proposed findings and exceptions.~~ Exceptions and arguments submitted on appeal of the initial decision.	(e) Proposed findings and exceptions.
(f) any decision, opinion, order or report by the officer presiding at the hearing and by the agency.	(f) ~~Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.~~ The initial and final decision in the case.	(f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.
(2). Agencies shall maintain records prepared under Subsection (1) of this Section.		
(3). Agencies shall make available official records of adjudications available to any party upon request, at cost.		

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(4). Agencies shall also prepare records of all final decisions rendered pursuant to Section 405 and Section 407, which shall include short summaries of the facts and issues involved and the text of the agency's written decisions.	**No provision.**	**No provision.**
(5). Agencies shall maintain collected, bound volumes of record of final decisions prepared under Subsection (4) of this Section.	**No provision.**	**No provision.**
(6). Agencies shall deliver or mail bound or loose-leaf copies of records of final decisions prepared under Subsection (5) of this Section to each county law library, bar association library, and law school library in this state.	**No provision.**	**No provision.**

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CHAPTER TWO. LEGISLATIVE SERVICE BUREAU, MICHIGAN REGISTER, AND MICHIGAN ADMINISTRATIVE CODE. **Section 201. Legislative Service Bureau.**		**24.256. Editorial work for code and supplements; classification compliance with compiled laws; form of publication; supplements, time**
(1). The Legislative Service Bureau shall perform the editorial work for the *Michigan Register* and for the *Michigan Administrative Code* and its annual supplement. The classification, arrangement, numbering, and indexing of rules and other items shall be uniform and, for the *Michigan Administrative Code*, shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The Legislative Service Bureau may correct in the publications obvious errors in rules when requested by the promulgating agency to do so.	Sec. 23 (1)-(2). Same as Current Law.	Sec. 56. (1) The legislative service bureau shall perform the editorial work for the Michigan register and the Michigan administrative code and its annual supplement. The classification, arrangement, numbering, and indexing of rules shall be uniform and shall conform as nearly as practicable to the classification, arrangement, numbering, and indexing of the compiled laws. The bureau may correct in the publications obvious errors in rules when requested by the promulgating agency to do so. The bureau may provide for publishing all or any part of the Michigan administrative code in bound volume, pamphlet, or loose-leaf form. (2) An annual supplement to the Michigan administrative code shall be published at the earliest practicable date.

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		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 the *Michigan Register* and the *Michigan Administrative Code* and its supplements shall be prorated by the Legislative Service Bureau on the basis of the volume of the materials published for each agency in the *Michigan Register* and the *Michigan Administrative Code* and its supplements. The cost of publishing and distribution shall be paid out of appropriations to the agencies.	Sec. 24 (2). The cost of publishing and distributing annual supplements to the Michigan administrative code and proposed rules, notices of public hearings on proposed rules, ~~small business economic impact statements,~~ administrative rules and emergency rules filed with the secretary of the state, ~~notices of proposed and adopted agency guidelines, and the items listed in section 7(l) in the Michigan register~~ shall be prorated by the legislative service bureau 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.	(2) The cost of publishing and distributing annual supplements to the Michigan administrative code and proposed rules, notices of public hearings on proposed rules, small business economic impact statements, administrative rules and emergency rules filed with the secretary of the state, notices of proposed and adopted agency guidelines, and the items listed in section 7(l) in the Michigan register shall be prorated by the legislative service bureau 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.
		24.258. Reproduction proofs or negatives; reimbursement; publication in pamphlets
(3). When so requested by an agency, the Legislative Service Bureau shall prepare reproduction proofs or negatives of the rules, or a portion of the rules, of the agency. The requesting agency shall reimburse the Legislative Service Bureau for preparing the reproduction proofs or negatives, and the cost of the preparation shall be paid out of appropriations to the agency.	Sec. 24 (2). . . . <u>The legislative service bureau may arrange to provide to agencies copies or plates of the rules, and to provide special compilations of rules, for which it shall be reimbursed for its costs by the agencies.</u>	Sec. 58. (1) When requested by an agency, the legislative service bureau shall prepare reproduction proofs or negatives of the rules, or a portion of the rules, of the agency. The requesting agency shall reimburse the legislative service bureau for preparing the reproduction proofs or negatives, and the cost of the preparation shall be paid out of appropriations to the agency.

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No provision.	**No provision.**	(2) The Michigan administrative code may be arranged and printed to make convenient the publication in separate pamphlets of the parts of the 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. **24.259. Distribution of register and code by department of management and budget**
(4). The Legislative Service Bureau shall print or order printed a sufficient number of copies of the *Michigan Register* and the *Michigan Administrative Code* and its annual supplement to meet the following requirements of this Subsection. The Department of Management and Budget shall deliver or mail copies of the same as follows: (a) to the secretary of the senate, a sufficient number to supply each senator, standing committee, and the secretary; (b) to the clerk of the house of representatives, a sufficient number to supply each representative, standing committee, and the clerk; (c) to each member of the legislature, 1 copy at the member's home address; (d) to the Legislative Service Bureau, 1 copy for each attorney on the bureau's staff; (e) to the department of the attorney general, 1 copy for each division;	Sec. 25 (1). Same as Current Law.	Sec. 59. (1) The legislative service bureau shall publish or order published a sufficient number of copies of the Michigan register, the Michigan administrative code, and the annual supplement to the code to meet the requirements of this section. Unless otherwise directed by the legislative service bureau, the department of management and budget shall deliver or provide copies as follows: (a) To the secretary of the senate, a sufficient number to supply each senator. (b) To the clerk of the house of representatives, a sufficient number to supply each representative. (c) To each member of the legislature, 1 copy at the member's home address. (d) To the legislative service bureau, 1 copy for each attorney on the bureau's staff. (e) To the department of the attorney general, 1 copy for each division.

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(f) to each other state department, 3 copies; (g) to each county law library, bar association library, and law school library in this state, 1 copy; (h) to other libraries throughout this state, 1 copy, upon request;		and law school library in this state, 1 copy. (h) To other libraries throughout this state, 1 copy, upon request. (i) Additional copies to an officer or agency of this state and other governmental officers, agencies, and libraries approved by the legislative service bureau; and additional copies of the Michigan register for persons who subscribe to the publication as provided in subsection (3).
(i) additional copies to an officer or agency of this state and other governmental officers, agencies, and libraries approved by the legislative service bureau; and additional copies of the Michigan register for persons who subscribe to the publication as provided in subsection (3).	Sec. 25 (3). Same as Current Law.	Sec. 59 (3). A person may subscribe to the Michigan register. The legislative service bureau shall determine a subscription price which shall not be more than the publication and distribution costs.
The copies of the *Michigan Register*, the *Michigan Administrative Code* and its supplements are for official use only by the agencies and persons identified above, and they shall deliver them to their successors, except that members of the legislature may retain copies sent to their home address. The Department of Management and Budget shall send to the home address of each new member of the legislature the current volume of the *Michigan Register* and a complete copy and latest supplement of the *Michigan Administrative Code*. The Department of Management and Budget shall deliver to the state library the *Michigan Register* and	Sec. 25 (2). The copies of the Michigan register, the Michigan administrative code, and the annual code supplement are for official use only by the agencies and persons prescribed in subsection (1), and they shall deliver them to their successors. The department of management and budget shall hold additional copies for sale at a price not less than the publication and distribution costs which shall be determined by the legislative service bureau. Copies shall be made available in both printed and electronic form.	Sec. 59 (2). The copies of the Michigan register, the Michigan administrative code, and the annual code supplement are for official use only by the agencies and persons prescribed in subsection (1), and they shall deliver them to their successors. The department of management and budget shall hold additional copies for sale at a price not less than the publication and distribution costs which shall be determined by the legislative service bureau.

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requested by the state library sufficient for the library's use and for exchanges. The Department of Management and Budget shall hold additional copies for sale at a fee reasonably calculated to cover publication and distribution costs, as determined by the Legislative Service Bureau.		
Section 202. Michigan Register.		**24.208. Michigan register; publication; contents; index; fee**
(1). The Legislative Service Bureau shall publish the *Michigan Register* at least once each month. The *Michigan Register* shall contain all of the following:	Sec. 21. (1) The legislative service bureau shall publish the Michigan register each month. The Michigan register shall contain all of the following:	Sec. 8. (1) The legislative service bureau shall publish the Michigan register each month. The Michigan register shall contain all of the following:
(a) 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;	(a) Executive orders and executive reorganization orders.	(a) Executive orders and executive reorganization orders.
(b) on a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year;	(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.	(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) all executive orders and executive reorganization orders;	(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.	(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) all attorney general opinions; and	(d) Proposed administrative rules.	(d) Proposed administrative rules.
(e) all of the items finally approved by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws.	~~(e) Small business economic impact statements on proposed rules as required by section 45.~~ (e) Notices of public hearings on proposed administrative rules.	(e) Small business economic impact statements on proposed rules as required by section 45. (f) Notices of public hearings on proposed administrative rules.

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(2). In addition, the Legislative Service Bureau shall publish in the *Michigan Register* all of the following: (a) notice and text of all proposed substantive rules, together with a proposing agency's explanation of the proposed rule and any additional information that may be required of the agency under Sections 303, 304, and 307 of this Act, including Small Business Economic Impact Statements, and Cost-Benefit Analyses; (b) all notices of public hearings on proposed substantive rules where such hearings are required by statute or deemed by agencies to be in the public interest, as required by Section 304 of this Act; (c) the text of all final substantive rules together with agencies' concise, general explanation of the final rule as required by Sections 303 and 304 of this Act; (d) the text of all agency procedural and interpretive rules as authorized by Sections 306 and 307 of this Act; and (e) the text of all emergency rules filed with the secretary of state. The Legislative Service Bureau shall promptly approve a proposed or final rule for inclusion in the *Michigan Register* if the Legislative Service Bureau considers the rule to be proper as to all matters of form,	(g) Emergency rules filed with the secretary of state. (h) ~~Notice of proposed and adopted agency guidelines.~~ Interpretative, procedural, and housekeeping rules adopted by an agency. (j) Other official information considered necessary or appropriate by the legislative service bureau. (k) Formal attorney general opinions. (l) All of the items listed in section ~~7(l)~~ 2(w)(xii) after final approval by the certificate of need commission or the statewide health coordinating council ~~under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws.~~ Sec. 45. (1) The legislative service bureau promptly shall approve a proposed substantive rule if the legislative service bureau considers the proposed rule to be proper as to all matters of form, classification, arrangement, and numbering. The department of	(h) Emergency rules filed with the secretary of state. (i) Notice of proposed and adopted agency guidelines. (j) Other official information considered necessary or appropriate by the legislative service bureau. (k) Attorney general opinions. (l) All of the items listed in section 7(l) after final approval by the certificate of need commission or the statewide health coordinating council under section 22215 or 22217 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.22215 and 333.22217 of the Michigan Compiled Laws. Sec. 45. (1) The legislative service bureau promptly shall approve a proposed rule if the legislative service bureau considers the proposed rule to be proper as to all matters of form, classification, arrangement, and numbering. The department of attorney general

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classification, arrangement, and numbering.	attorney general promptly shall approve a proposed substantive rule if the department considers the proposed rule to be legal.	shall approve a proposed rule if the department considers the proposed rule to be legal.
(3). In addition to all of the above, the Legislative Service Bureau shall also publish in the *Michigan Register* any other official information it considers necessary or appropriate.	**No provision.**	**No provision.**
(4). If publication of any items listed in this Section would be unreasonably expensive or lengthy, the Legislative Service Bureau may publish instead a brief synopsis of such an item together with information on how to obtain a complete copy of the item from the agency at no cost.	Sec. 21. (5) If publication of an agency's proposed rule~~, guideline, or small business economic impact statement or an item described in subsection (1)(l)~~ would be unreasonably expensive or lengthy, the legislative service bureau may publish a brief synopsis of the proposed rule~~, guideline, small business impact statement, or item described in subsection (1)(l), including~~ and include information on how to obtain a complete copy of the proposed rule~~, guideline, small business impact statement, or item described in subsection (1)(l)~~ from the agency at no cost.	(4) If publication of an agency's proposed rule, guideline, or small business economic impact statement or an item described in subsection (1)(l) would be unreasonably expensive or lengthy, the legislative service bureau may publish a brief synopsis of the proposed rule, guideline, small business impact statement, or item described in subsection (1)(l), including information on how to obtain a complete copy of the proposed rule, guideline, small business impact statement, or item described in subsection (1)(l) from the agency at no cost.
(5). The Legislative Service Bureau shall also publish, no less often than annually, a cumulative index for the *Michigan Register* organized by subject matter.	Sec. 21. (2) Same as Current Law.	(2) The legislative service bureau shall publish a cumulative index for the Michigan register.
(6). The *Michigan Register* shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs. As soon as practicable, the *Michigan Register* should be accessible on-line, such as from the State of Michigan's Internet homepage.	Sec. 21. (3) Same as Current Law.	(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.
No provision.	Sec. 21. (4) An agency shall transmit a copy of ~~the small business economic impact statement, together with the applicable~~ a proposed rules and notice of the public hearing, to the legislative service bureau for	(5) An agency shall transmit a copy of the small business economic impact statement, together with the applicable proposed rules and notice of public hearing, to the legislative service bureau for publication in

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	publication in the Michigan register.	the Michigan register.
Section 203. Michigan Administrative Code.		**24.258. Reproduction proofs or negatives; reimbursement; publication in pamphlets**
(1). The Legislative Service Bureau shall compile and publish the *Michigan Administrative Code*, containing in codified form the final text of agency rules, as often as practicable, and at least every seven years. The *Michigan Administrative Code* may be arranged and printed to make convenient the publication in separate volumes or pamphlets, or loose-leaf pages those parts of the code relating to different agencies. Agencies may order the such separate volumes, pamphlets, or pages the cost of which shall be paid out of appropriations to the agencies.	**No provision.**	Sec. 58. (1) When requested by an agency, the legislative service bureau shall prepare reproduction proofs or negatives of the rules, or a portion of the rules, of the agency. The requesting agency shall reimburse the legislative service bureau 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 in separate pamphlets of the parts of the 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.
		24.255. Michigan administrative code; supplements; public subscription
(2). The Legislative Service Bureau shall publish an annual supplement to the *Michigan Administrative Code*. The annual supplement shall contain all final 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 complete compilation of the *Michigan Administrative Code*, and a cumulative alphabetical index.	Sec. 22. (1) The legislative service bureau annually shall publish a supplement to the Michigan administrative code. The annual supplement shall contain all promulgated substantive rules and adopted procedural and interpretative 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 compilation of the code, and a cumulative alphabetical index.	Sec. 55. (1) The legislative service bureau annually shall publish a 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 compilation of the code, and a cumulative alphabetical index.

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The annual supplement shall be published at the earliest practicable date.		**24.257. Omission of rules from code or register; publication costs; proration; payment**
(3). If publication of any rule in the *Michigan Administrative Code* and/or its annual supplement would be unreasonably expensive or lengthy, the Legislative Service Bureau may publish instead a brief synopsis of the rule together a notice stating the general subject and substance of the omitted rule and information on how to obtain a complete copy it from the relevant agency at no cost.	Sec. 24. (1) Same as Current Law.	Sec. 57. (1) The legislative service bureau may omit from the Michigan register and the Michigan administrative code, and the 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, and if the 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.
(4). The *Michigan Administrative Code* and its annual supplements shall be made available for public subscription at a fee reasonably calculated to cover publication and distribution costs.	Sec. 22. (2) Same as Current Law.	Sec. 55 (2) The Michigan administrative code and the annual supplements shall be made available for public subscription at a fee reasonably calculated to cover publication and distribution costs.
CHAPTER THREE. RULES AND RULEMAKING.		
Section 301. Request for Rulemaking.		**24.238. Requests for promulgation of rule, procedure, review**
Any party may request an agency to initiate, amend, or rescind a rule. Within 90 days after filing of a request, the agency shall either initiate a rulemaking or issue to the requesting party a concise written statement of its principal reasons for denying the request.	Sec. 36. A person may request an agency to adopt an interpretative, procedural, or substantive ~~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.	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.
Section 302. Informal Rulemaking: Notice; Comment; Explanation of Final Rule.		**24.241. Notice of hearing, necessity, time, contents, form, recipients; hearing, sufficiency**
(1). **Notice.** Where an agency is authorized by statute to make substantive rules and where that	Sec. 41. (1) . . . before the adoption of an interpretative,	Sec. 41. (1) Except as provided in

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statutory authority does not explicitly require the agency to hold a public hearing in conjunction with its rulemaking, the agency shall publish in the *Michigan Register* public notice of: (a) its intent to adopt a rule; (b) the legal authority under which it intends to adopt the rule; (c) the main substantive issues requiring and otherwise implicated in the rule; (d) the text of the proposed rule; (e) any information required to accompany a proposed rule under Section 308; and (f) the address of the agency office to which comments on the proposed rule may be sent. In addition to the Michigan Register, the agency shall publish the above information in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula, or, in lieu of newspaper publication, the agency may provide notice electronically through publicly accessible Internet media. Additional methods may be employed by the agency, depending upon the circumstances, including publication in trade, industry, governmental, or professional publications.	procedural, or substantive rule, . . . [Same as Current Law]	section 44, before the adoption of a rule, an agency shall give notice of a public hearing and offer a person an opportunity to present data, views, questions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none, in the manner prescribed in section 42(1). (2) The notice described in subsection (1) shall include all of the following: (a) A reference to the statutory authority under which the action is proposed. (b) The time and place of the public hearing and a statement of the manner in which data, views, questions, and arguments may be submitted by a person to the agency at other times. (c) A statement of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date of the rule. (3) The agency shall transmit copies of the notice to each person who requested the agency in writing for advance notice of proposed action which may affect the person. The notice shall be by mail, in writing, to the last address specified by the person.

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		(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.
(2). **Comment.** After providing the notice required in Subsection (1), the agency shall provide potentially interested parties with a reasonable opportunity to supply the agency with written comments, arguments, or data relating to the proposed rule. As soon as practicable, agencies should provide for electronic submission of written views on proposed rules. Such written feedback shall become part of the rulemaking record. Where the agency deems necessary, it may amend the text of its proposed rule in response to any written comments, arguments, or data it receives, and provide public notice anew of the amended text of its proposed rule.	**No provision.**	**No provision.**

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(3). **Explanation of Final Rule.** After consideration of the feedback received under Subsection (2), if any, the agency shall publish in the *Michigan Register* the text of the final rule adopted by the agency, together with a concise, general statements explaining the final form of the rule.	**No provision.**	**No provision.**
Section 303. Formal Rulemaking.		**24.242. Methods of publishing notice**
(1). Where an agency is required by statute to promulgate substantive rules and where that statutory authority requires the agency to hold a public hearing in conjunction with its rulemaking, the agency shall give notice of a public hearing and offer interested parties an opportunity to present data, views, questions, and arguments.	Sec. 41. (2) Same as Current Law.	Sec. 42. (1) Except as provided in section 44, at a minimum, an agency shall publish the notice of public hearing as prescribed in any applicable statute, or if none, the agency shall publish the notice not less than 10 days and not more than 60 days before the date of the public hearing in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula.
(2). Such notice shall be given within the time and manner prescribed by any applicable statute, if any. If the time and manner of notice is not prescribed by any applicable statute, the agency shall publish the notice not fewer than 10 days and not more than 60 days before the date of the public hearing either in at least 3 newspapers of general circulation in different parts of the state, 1 of which shall be in the Upper Peninsula, or electronically through publicly accessible Internet media.		(2) Additional methods that may be employed by the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications.
(3). Additional methods may be employed by the agency, depending upon the circumstances, include publication in trade, industry, governmental, or professional publications.		(3) In addition to the requirements of subsection (1), the agency shall submit a copy of the notice to the legislative service bureau for publication in the Michigan register. An agency's notice shall be published in the Michigan register not less than 30 days and not more than 90 days before the public hearing.

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(4). In addition to the requirements of Subsection (2), the agency shall also publish the notice in the *Michigan Register* not fewer than 30 days and not more than 90 days before the public hearing. (5). The notice described in subsections (1)-(4) 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; and (c) a statement of the terms or substance of the proposed rule, a description of the subjects and issues involved, and the proposed effective date of the rule. (6). The agency shall also transmit copies of the notice to any person who requested the agency in writing for advance notice of specific proposed action which may directly affect that person. The notice shall be by mail, in writing, to the last address specified by the person. (7). The public hearing shall comply with any applicable statute, but is not subject to the procedural provisions required in an adjudication under Chapter 4 of this Act.	Sec. 42. (1) The public hearing <u>required in section 41</u> shall comply with any applicable statute, but is not subject to the provisions governing a contested case. <u>An agency which is subject to section 41 shall adopt procedural rules for the conduct of public hearings called for in section 41 within two years after the effective date of this act.</u>	Sec. 41. (4) The public hearing shall comply with any applicable statute, but is not subject to the provisions governing a contested case.

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(8). 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 conduct and participate in the discussion of the proposed rule.	Sec. 42. (2) The public hearing shall be open to the public. A person shall have the opportunity to present data, views, and argument, both in writing and orally, but the agency may limit the time available to each person for oral presentation. 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 substantive rule shall be present at the public hearing and shall participate in the discussion of the proposed rule.	Sec. 41. (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.
		24.243. Failure to comply with procedural requirements; effect
(9). Except in the case of an emergency rule promulgated under Section 309 or a rule promulgated under subsection (10) of this Section, a substantive rule authorized only following a public hearing is not valid unless processed in substantial compliance with this Section.	Sec. 32. (2) A procedural rule adopted after the effective date of this section is not valid unless processed in compliance with this section. However, inadvertent failure to give notice to any person as required does not invalidate a procedural rule which was otherwise processed in substantial compliance with this section. Sec. 33. (2) An interpretative rule adopted after the effective date of this section is not valid unless processed in compliance with this section. However, inadvertent failure to give notice to any person as required does not invalidate an interpretative rule which was otherwise processed in substantial compliance with this section.	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).

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	Sec. 43. (1) A substantive rule adopted after the effective date of this section is not valid unless processed in compliance with sections 41 and 42. However, inadvertent failure to give notice to any person as required does not invalidate a rule processed thereunder.	
A proceeding to contest a rule on the ground of noncompliance with the this Section must be commenced within 2 years after the effective date of the rule in question.	Sec. 32. (3) A proceeding to contest a procedural rule on the ground of noncompliance with the requirements of this section shall be commenced within 2 years after the effective date of the procedural rule.	(2) A proceeding to contest a rule on the ground of noncompliance with the requirements of sections 41 and 42 shall be commenced within 2 years after the effective date of the rule.
	Sec. 33. (3) A proceeding to contest an interpretative rule on the ground of noncompliance with the requirements of this section shall be commenced within 2 years after the effective date of the interpretative rule.	
	Sec. 43. (2) A proceeding to contest a substantive 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.	**24.244. Notice of public hearings; exceptions to requirements; definition**
(10). This Section does 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. Nor does this Section apply to any rule promulgated under the Michigan Occupational Safety and Health Act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the	Sec. 44. Same as Former Law.	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.

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Michigan Compiled Laws, that is identical with the exception of style, format, or other technical differences needed to conform to this or other State laws 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, the notice-and-comment requirements of Section 302 shall apply to such a rule instead of this Section.		(2) Sections 41 and 42 do not apply to a rule that is promulgated under the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, 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 60 days before the submission of the rule to the secretary of state pursuant to section 46(4). A reasonable period, not to exceed 30 days, shall be provided for the submission of written 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 department of attorney general pursuant to section 45(1).
Section 304. Negotiated Rulemaking. Where an agency deems it to be in the public interest, the agency may, following notice in the *Michigan Register*, convene committees composed of representatives of parties interested in the development of a given rule for the purpose of developing the text of a proposed, substantive rule. Meetings of such committees shall be announced in advance in the *Michigan Register* and shall be open to the public. One or more representatives from	**No provision.**	**No provision.**

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the agency developing the rule shall attend and chair each meeting, and minutes of all meetings shall be maintained by the agency and shall become part of the agency's rulemaking record. When the convened parties come to an agreement concerning the text of a proposed rule, or when the agency determines that additional meetings would no longer be productive, the agency shall commence ordinary rulemaking under Section 302 or 303.		
Section 305. Housekeeping Rules.		**24.233. Descriptions of agency organization, operations and procedures; forms with instructions**
(1). An agency may develop rules, not affecting the rights of other parties, that describe its organization and state the general course and method of its internal operations.	Sec. 31. An agency shall adopt housekeeping rules insofar as practicable. In adopting housekeeping rules an agency is governed by the terms of this section, but the other procedures contained in this chapter shall not apply. When adopted, a housekeeping rule is a public record and shall be made available by the agency for public inspection. Copies of housekeeping rules shall be sent to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. Housekeeping rules shall not be included in the Michigan administrative code.	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 and 42 do not apply to such rules.
(2). Section 302's notice-and-comment requirements, and Section 303's public hearing requirements, do not apply to the creation of such housekeeping rules.		
(3). An agency must maintain a written record of such rules, but such Section 202's requirement that substantive rules be published in the *Michigan Register* and Section 203's requirement that rules be codified in the *Michigan Administrative Code* do not apply to such rules.		

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Section 306. Procedural Rules.		
(1). An agency shall develop rules, affecting only the procedural rights of other parties, that detail the procedures according to which it will make decisions and according to which interested parties may participate in the development of agency decisions in a manner consistent with any applicable statute. An agency shall also promulgate rules prescribing its procedures and the methods by which the public may obtain information, submit requests, or otherwise communicate with the agency. Such procedural rules may include forms with instructions.	Sec. 32. (1) An agency shall adopt procedural rules, including procedural rules prescribing the methods by which the public may obtain information and submit requests. In adopting procedural rules an agency is governed by the terms of this section and by sections 41 and 42, but the other procedures contained in this chapter shall not apply. When adopted, a procedural rule is a public record and shall be made available by the agency for public inspection. Copies of procedural rules shall be sent to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. Procedural rules adopted by an agency shall be published in the Michigan register and shall take effect on the date of publication in the register unless a later time is stated in the rules. Procedural rules shall be included in the Michigan administrative code.	Sec. 33. (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.
(2). Section 302's notice-and-comment requirements, and Section 303's public hearing requirements, do not apply to the creation of procedural rules, although an agency may solicit commentary or hold a hearing where it deems the public interest would thereby be served.		
(3). An agency's procedural rules may prescribe the procedures used in the agency's rulemaking and adjudication processes, provided that agency-prescribed rules are consistent with this Act.	Sec. 32. (4) An agency may adopt ~~promulgate~~ procedural rules, not inconsistent with this act or other applicable statutes, prescribing procedures for contested cases.	Sec. 33 (3) An agency may promulgate rules, not inconsistent with this act or other applicable statutes, prescribing procedures for contested cases.
(4). Procedural rules become effective upon promulgation in the *Michigan Register*. An agency's procedural rules shall also be compiled in the *Michigan Administrative Code*.		

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Section 307. Interpretive Rules.		CHAPTER 2. GUIDELINES.
		24.224. Adoption of proposed guideline, notice
(1). An agency may develop rules that explain the agency's interpretation of any statutory term a clear understanding of which is necessary for the agency to perform its statutory duties, but the exact meaning of which the legislature did not intend for the agency to determine authoritatively.	Sec. 33. (1) An agency may adopt interpretative rules. In adopting interpretative rules, an agency is governed by the terms of this section and by sections 41 and 42, but the other provisions contained in this chapter shall not apply. When adopted, an interpretative rule is a public record and shall be made available by the agency for public inspection. Copies of interpretative rules shall be sent to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. Interpretative rules adopted by an agency shall be published in the Michigan register and shall take effect on the date of publication in the register unless a later time is stated in the rules. Interpretative rules shall be included in the Michigan administrative code.	Sec. 24. Before the adoption of a guideline, an agency shall give notice of the proposed guideline to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and each person who requested the agency in writing for advance notice of proposed action which may affect the person. The notice shall be sent to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them.
		25.225. Status as public record; transmittal
		Sec. 25. When adopted, a guideline is a public record. Copies of guidelines shall be sent to the joint committee on administrative rules, the legislative service bureau, the office of the governor, and all persons who have requested the agency in writing for advance notice of proposed action which may affect them.

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(2). Section 302's notice-and-comment requirements, and Section 303's public hearing requirements, do not apply to the creation of such interpretive rules, although an agency may solicit commentary or hold a hearing where it deems the public interest would thereby be served.	**No provision.**	**24.226. Adoption in lieu of rule; prohibited** Sec. 26. An agency shall not adopt a guideline in lieu of a rule. **24.227. Adoption of guidelines; validity; proceedings to contest**
(3). Interpretive rules become effective upon promulgation in the *Michigan Register*. Interpretive rules shall also be codified in the *Michigan Administrative Code*.	**No provision.**	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.
(4). Interpretive rules are not binding on the agency or on any other party.	**No provision.**	(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.

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Section 308. Information Requirements for Substantive Rulemaking: Small Business Economic Impact Statement; Cost-Benefit Analysis.		
(1). **Small Business Economic Impact Statements.** When an agency proposes a substantive rule that will have a primary, direct, and substantial effect on small businesses within the State, the agency shall prepare and publish in the *Michigan Register* along with the text of its proposed rule a Small Business Economic Impact Statement. A Small Business Economic Impact Statement shall contain all of the following with respect to the proposed rule:	**Deleted.**	Sec. 43 (3) Except as provided in subsection (13) and section 40(4), if the regulatory impact statement discloses an impact on small businesses, the agency shall include with the letter of transmittal a small business economic impact statement in a form prescribed by the committee. A small business economic impact statement shall contain all of the following with respect to the proposed rules:
(a) the nature of any reports and the estimated cost of their preparation by small businesses that would be required to comply with the proposed rules;		(a) The nature of any reports and the estimated cost of their preparation by small businesses that would be required to comply with the proposed rules.
(b) an analysis of the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs;		(b) An analysis of the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.
(c) the nature and estimated cost of any legal, consulting, and accounting services that small businesses would incur in complying with the proposed rules;		(c) The nature and estimated cost of any legal, consulting, and accounting services that small businesses would incur in complying with the proposed rules.
(d) a statement regarding whether the proposed rules will have a disproportionate impact on small businesses because of the size of those businesses;		(d) A statement regarding whether the proposed rules will have a disproportionate impact on small businesses because of the size of those businesses.

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(e) the ability of small businesses to absorb the costs estimated under subdivisions (a) to (c) without suffering economic harm and without adversely affecting competition in the marketplace; (f) the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses; (g) the impact on the public interest of exempting or setting lesser standards of compliance for small businesses; (h) a statement regarding the manner in which the agency reduced the economic impact of the rule on small businesses or a statement regarding the reasons such a reduction was not feasible; and (i) a statement regarding whether and how the agency has involved small businesses in the development of the rule. For the purpose of this subsection, "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.		(e) The ability of small businesses to absorb the costs estimated under subdivisions (a) to (c) without suffering economic harm and without adversely affecting competition in the marketplace. (f) The cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses. (g) The impact on the public interest of exempting or setting lesser standards of compliance for small businesses. (h) A statement regarding the manner in which the agency reduced the economic impact of the rule on small businesses as required under section 40, or a statement regarding the reasons such a reduction was not feasible. (i) A statement regarding whether and how the agency has involved small businesses in the development of the rule. **24.207a. Small business, small business economic impact statement, defined** Sec. 7a. (1) "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. (2) "Small business economic impact statement" means a

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		statement prepared by a state agency which meets the requirements of section 45(3).
In order to obtain cost information for purposes of this section, an agency may survey a representative sample of affected small businesses or trade associations or may adopt any other means considered appropriate by the agency.	**Deleted.**	Sec. 45 (4) In order to obtain cost information for purposes of subsection (3), an agency may survey a representative sample of affected small businesses or trade associations or may adopt any other means considered appropriate by the agency.
The agency shall transmit a copy of the small business economic impact statement to the director of commerce. The director of commerce shall review the statement, and within 30 days after receipt, shall notify the agency of any additional information relevant to the proposed rule's impact on small business not contained in the agencies Small Business Economic Impact Statement.	**Deleted.**	(5) The agency shall transmit a copy of the small business economic impact statement to the director of commerce at the same time as required in subsection (3) for transmittal to the committee. The director of commerce shall review the statement and within 30 days after receipt shall notify the committee of any additional information pertinent to the committee's review. **24.240. Reduction of economic impact of proposed rule on small businesses**
(2). When an agency proposes a substantive rule which will apply to a small business, and the small business economic impact statement discloses that the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing one or more of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:	**Deleted.**	Sec. 40. (1) When an agency proposes to adopt a rule which will apply to a small business, and the small business economic impact statement discloses that the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing 1 or more of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

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(a) establish differing compliance or reporting requirements or timetables for small businesses under the rule;	**Deleted.**	(a) Establish differing compliance or reporting requirements or timetables for small businesses under the rule.
(b) consolidate or simplify the compliance and reporting requirements for small businesses under the rule;		(b) Consolidate or simplify the compliance and reporting requirements for small businesses under the rule.
(c) establish performance rather than design standards, when appropriate; or		(c) Establish performance rather than design standards, when appropriate.
(d) exempt small businesses from any or all of the requirements of the rule.		(d) Exempt small businesses from any or all of the requirements of the rule.
If appropriate in reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency may use the following classifications of small business:	**Deleted.**	(2) If appropriate in reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency may use the following classifications of small business:
(a) 0-9 full-time employees;		(a) 0-9 full-time employees.
(b) 10-49 full-time employees; or		(b) 10-49 full-time employees.
(c) 50-249 full-time employees.		(c) 50-249 full-time employees.
For purposes of this section, 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. This section shall not apply, however, to a rule which is required by federal law and which an agency promulgates without imposing standards more stringent than those required by the federal law.	**Deleted.**	(3) For purposes of subsection (2), 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. (4) This section and section 45(3) shall not apply to a rule which is required by federal law and which an agency promulgates without imposing standards more stringent than those required by the federal law.

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(3). **Cost-Benefit Analysis.** A Cost-Benefit Analysis shall accompany all proposed, substantive agency rules which an agency determines will have a major impact on the economy of the State or on a sector of the economy. The Cost-Benefit Analysis shall include:	**Deleted.**	Sec. 45. (2) Except as provided in subsection (13), after publication of the proposed rule in the Michigan register and after notice is given as provided in this act and before the agency proposing the rule has formally adopted the rule, the agency shall transmit by letter to the committee copies of the rule bearing certificates of approval from the legislative service bureau and the department of attorney general and copies of the rule without certificates. The agency transmittal shall be received by the committee within 2 years after the date of the last public hearing on the proposed rule unless the proposed rule is a resubmission under subsection (11). The agency shall include with the letter of transmittal a regulatory impact statement on a 1-page form provided by the committee. The statement shall provide estimates of the impact of the proposed rules upon all of the following:
(a) the revenues, expenditures, and paper work requirements of the agency proposing the rule;		(a) The revenues, expenditures, and paper work requirements of the agency proposing the rule.
(b) the revenues and expenditures of any other state or local government agency affected by the proposed rule;		(b) The revenues and expenditures of any other state or local government agency affected by the proposed rule.

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(c) the total estimated costs generated by the proposed rule, including compliance costs; (d) the total estimated benefits generated by the proposed rule, including environmental and other benefits that are difficulty to quantify; (e) the identity of the taxpayers, consumers, industry or trade groups, small business, or other applicable groups affected by the proposed rule and an explanation of what the distributive impacts of the rule are likely to be; (f) an explanation of why the rule is necessary and of what alternatives to the proposed rule the proposing agency has considered, if any, including but not limited to economic incentives such as user fees or marketable permits to achieve the desired results; and (g) an explanation of how the proposed rule will maximize net benefits.		(c) The taxpayers, consumers, industry or trade groups, small business, or other applicable groups affected by the proposed rule.

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Section 309. Emergency Rules. (1). If an agency finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the procedures required by Section 302 or Section 303 of this Act, and if the agency states in the rule its reasons for that finding, and if the governor concurs in the finding of emergency, the agency may dispense with all or part of the procedures set forth in Sections 302 and 303 and instead file in the office of the Secretary of State three copies of the emergency rule, to one of which copies shall be attached a certificate from the Governor concurring in the agency's finding of emergency. Such an emergency rule is effective on filing and remains in effect until a date fixed in the rule or 60 days after the date of its filing, whichever is earlier. The emergency rule may be extended once for not more than 60 days 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. 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*.	Sec. 48. (1) If an agency finds that preservation of the public health, safety, ~~or~~ welfare, or financial resources entrusted to the agency requires promulgation of an emergency substantive 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 indorsed 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. If an extension is sought the agency shall inform the committee of the status of efforts to develop substantive rules regarding the subject matter of the emergency rules. 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~~ 21.	**24.248. Emergency rules, promulgation without notice and participation procedures, effective date, term, numbering and compiling, publication, rescission** 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 indorsed 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. 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.

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(2). If, thereafter, an 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 Sections 303 and 304 of this Act.	Sec. 48. (3) Same as Current Law.	(2) 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.
(3). The legislature by a concurrent resolution may rescind an emergency rule promulgated pursuant to this section.	Sec. 48. (4) Same as Current Law.	(3) The legislature by a concurrent resolution may rescind an emergency rule promulgated pursuant to this section.
Section 310. Agency Review of Existing Rules.		**24.253. Review of agency rules**
(1). Every two years, each agency shall prepare a plan for the review of the agency's existing rules. The plan shall be transmitted to the chair and ranking minority member of legislative committees with relevant oversight jurisdiction over the agency, to the Director of the Department of Management and Budget, and to the Office of Regulatory Reform. Each agency shall conduct a review pursuant to its submitted plan.	**Deleted.**	Sec. 53. (1) Each agency shall prepare a plan for the review of the agency's rules that are brought to the attention of the Michigan business ombudsman. The plan shall be transmitted to the committee and to the director of the department of commerce. The agency shall conduct a review pursuant to the plan.
(2). In conducting the review required by this section, each agency shall prepare a Small Business Economic Impact Statement, if the review discloses a previously unforeseen impact on small businesses. The agency shall also review its rules to ensure that the marginal benefits of its rules continue to exceed their marginal costs.	**Deleted.**	(2) In conducting the review required by this section, the agency shall prepare a small business economic impact statement if the review discloses an impact on small businesses. The agency shall prepare a recommendation based on the review as to whether the rules should be continued without change or should be amended or rescinded. If the small business economic impact statement discloses that an existing rule has a disproportionate impact on small

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(3). The agency shall prepare a recommendation based on its review as to whether its rules should be continued without change, amended, or rescinded. The agency shall forward such recommendation to the chair and ranking minority member of each legislative committee with oversight jurisdiction over the agency, to the Director of the Department of Management and Budget, and to the Office of Regulatory Reform.	**Deleted.**	businesses because of the size of those businesses, the agency reviewing the rule shall, if it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule, amend or rescind the rule pursuant to this act to reduce or eliminate the disproportionate impact of the rule on small businesses. (3) The small business economic impact statement and recommendation shall be transmitted to the committee and the director of the department of commerce. The director shall review the statement and shall notify the committee of any additional information pertinent to the committee's review. (4) Four years after its effective date, this section shall not apply.

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Section 311. Legislative Oversight of Agency Rulemaking: Concurrent Resolution of Disapproval; Bill of Rejection; Legislative Corrections Week.		**24.235. Joint committee on administrative rules; creation; membership, expenses; meetings; hearings; action by concurring majorities; reports**
(1). **Concurrent Resolution of Disapproval.** If any legislative standing committee with relevant jurisdiction over the subject matter of a final rule or any 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 concurrent resolution at a regular or special session of the legislature expressing the determination of the legislature that the rule should be amended or rescinded. Adoption of the concurrent resolution constitutes legislative disapproval of the rule, but rejection of the resolution does not necessarily constitute legislative approval of the rule.	Sec. 34. The joint committee on administrative rules is created and consists of ~~5~~ 7 members of the senate and ~~5~~ 7 members of the house of representatives appointed in the same manner as standing committees are appointed for terms of 2 years. 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 substantive rule transmitted to the committee. 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.	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. 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). **Bill of Rejection.** If any legislative standing committee with relevant jurisdiction over the subject matter of a final rule or any 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 at a regular session, or special session if included in a governor's message, introduce a bill amending or rescinding the rule for presentation to the Governor for his or her signature. The introduction of such bill stays the effective date of the whole or part of the final rule for 60 days.		

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(3). **Legislative Corrections Week.** At least twice each legislative year, the leadership of the Senate and of the House shall designate a "legislative corrections week" for the purpose of focused and expedited consideration of bills to repeal, amend, or otherwise modify existing agency rules which the legislature considers to be contrary to legislative intent or to sound public policy. Such resolutions shall, pursuant to each chamber's scheduling rules, be given priority status in each chamber's legislative calendars.	**No provision.**	(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, Act No. 268 of the Public Acts of 1986, being section 4.1104a of the Michigan Compiled Laws.
		24.236. Procedures and standards for drafting, processing, publication, and distribution of rules; manual
	Sec. 35. The joint committee on administrative rules may prescribe procedures and standards not inconsistent with this act or other applicable statutes, for the drafting, processing, publication and distribution of <u>interpretative, procedural, and substantive</u> rules. The procedures and standards shall be included in a manual which the legislative service bureau shall publish and distribute in reasonable quantities to the state departments.	Sec. 36. The joint committee on administrative rules may prescribe procedures and standards not inconsistent with this act or other applicable statutes, for the drafting, processing, publication and distribution of rules. The procedures and standards shall be included in a manual which the legislative service bureau shall publish and distribute in reasonable quantities to the state departments.
	Sec. 45. (3) Same as Current Law.	Sec. 45. (6) After receipt by the committee of the agency's letter of transmittal, the committee has 2 months in which to consider the rule. If the committee by a majority vote determines that added time is needed to consider proposed rules, the committee may extend the time it has to consider a particular proposed rule by 1 month to a total of not longer than 3 months. This subsection, subsections (2) to (5), and subsections (7) to (12) do not apply to an emergency rule.

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	Deleted.	(7) The committee shall furnish the senate fiscal agency and the house fiscal agency with a copy of each rule and regulatory impact statement filed with the committee, as well as a copy of the agenda identifying the proposed rules to be considered by the committee. The senate fiscal agency and the house fiscal agency shall analyze each proposed rule for possible fiscal implications which, if adopted, would result in additional appropriations in the current fiscal year or commit the legislature to an appropriation in a future fiscal year. The senate fiscal agency and the house fiscal agency shall report their findings in writing to the senate and house appropriations committees and to the committee before the date of consideration of the proposed rule by the committee.
	Sec. 45. (4) Same as Current Law.	(8) If the committee approves the proposed rule within the time period provided by subsection (6), the committee shall attach a certificate of its approval to all copies of the rule bearing certificates except 1 and transmit those copies to the agency.
	Sec. 45. (5) Same as Current Law.	(9) If, within the time period provided by subsection (6), the committee disapproves the proposed rule or the committee chairperson certifies an impasse after votes for approval and disapproval have failed to receive concurrent majorities, the committee shall immediately report that fact to the legislature and return the rule to the agency. The agency shall not adopt or promulgate the rule unless 1 of the following occurs:

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		(a) The legislature adopts a concurrent resolution approving the rule within 60 days after the committee report has been received by, and read into the respective journal of, each house. (b) The committee subsequently approves the rule.
	Sec. 45. (6) Same as Current Law.	(10) If the time permitted by this section expires and the committee has not taken action under either subsection (8) or (9), then the committee shall return the proposed rules to the agency. The chairperson and alternate chairperson shall cause concurrent resolutions approving the rule to be introduced in both houses of the legislature simultaneously. Each house of the legislature shall place the concurrent resolution directly on its calendar. The agency shall not adopt or promulgate the rule unless 1 of the following occurs: (a) The legislature adopts a concurrent resolution approving the rule within 60 days after introduction by record roll call vote. The adoption of the concurrent resolution requires a majority of the members elected to and serving in each house of the legislature. (b) The agency resubmits the proposed rule to the committee and the committee approves the rule within the time permitted by this section.

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	Sec. 45. (7) Same as Current Law.	(11) An agency may withdraw a proposed rule by leave of the committee. An agency may resubmit a rule so withdrawn or returned under subsection (9) with changes following a committee meeting on the proposed rule or with minor modifications. A resubmitted rule is a new filing and subject to this section, but is not subject to further notice and hearing as provided in sections 41 and 42.
	Sec. 45. (8) Same as Current Law.	(12) If the committee approves the proposed rule within the time period provided by subsection (6), or the legislature adopts a concurrent resolution approving the rule, the agency, if it wishes to proceed, shall formally adopt the rule pursuant to any applicable statute and make a written record of the adoption. Certificates of approval and adoption shall be attached to at least 6 copies of the rule.
	No provision.	(13) Subsections (2) through (12) do not apply to a rule that is promulgated under the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, being sections 408.1001 to 408.1094 of the Michigan Compiled Laws, 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.

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No provision.		**24.246. Procedure for promulgating rules; arrangement, binding and certification, and inspection of rules**
	Sec. 46. (1) . . . to promulgate a substantive rule	Sec. 46. (1) Except for a rule processed pursuant to section 44(2), to promulgate a rule an agency shall file in the office of the secretary of state 3 copies of the rule bearing the required certificates of approval and adoption and true copies of the rule without the certificates. An agency shall not file a rule, except an emergency rule under section 48, 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. An agency shall transmit a copy of the rule bearing the required certificates of approval and adoption to the office of the governor at least 10 days before it files the rule.
	Sec. 46. (2) Same as Current Law.	(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.
	Sec. 46. (3) Same as Current Law.	(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

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		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.
	No provision.	(4) To promulgate a rule processed pursuant to section 44(2), an agency, after the period provided for written comments, shall file in the office of the secretary of state 3 copies of the rule along with the approval of the legislative service bureau and the department of attorney general.
No provision.	Sec. 47. (2) Same as Current Law.	Sec. 47. (2) Except in case of a rule processed under section 48, an agency may withdraw a promulgated rule which has not become effective by a written request stating reasons, (a) 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 (b) to the secretary of state and the legislative service bureau, within a reasonable time as determined by the bureau, 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 joint committee on administrative rules that the rule has been withdrawn.

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		24.251. Amendment or rescission of rules, grounds, procedure
No provision.	Sec. 51. Same as Current Law.	Sec. 51. If the joint committee on administrative rules, 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 do either or both of the following: (a) Introduce a concurrent resolution at a regular or special session of the legislature expressing the determination of the legislature that the rule should be amended or rescinded. Adoption of the concurrent resolution constitutes legislative disapproval of the rule, but rejection of the resolution does not constitute legislative approval of the rule. (b) 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.
		24.252. Suspension of rules, procedure, effect
No provision.	Sec. 52. Same as Current Law.	Sec. 52. If authorized by concurrent resolution of the legislature, the joint committee on administrative rules, acting between regular sessions, may suspend a rule or a part of a rule promulgated during the interim between regular sessions. The committee shall notify the agency promulgating the rule, the secretary of state, the department of management and budget, and

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		the rule or part of a rule shall not be published in the Michigan register or in the Michigan administrative code while suspended. A rule suspended by the committee continues to be suspended until the end of the next regular session.
CHAPTER FOUR. ORDERS AND ADJUDICATION. **Section 401. Applicability.**		
This Chapter shall apply to all agency decisions other than rules. Nothing in this Chapter or in Section 403 in particular, however, shall prevent an agency from participating in negotiation, mediation, or other informal dispute-resolution techniques where an agency's powers permit and as the agency deems such would serve the public interest.	**No provision.**	**No provision.**
Section 402. Informal Orders: Procedure for Informal Orders; Declaratory Orders; Licensing Decisions.		
(1). **Procedure.** Where an agency is authorized by statute to make decisions that are not rules, including but not limited to declaratory orders and licensing decisions, and where such statutory authority does not require such decisions to follow a formal, evidentiary hearing on a record, the agency may adopt any procedural rules which the agency deems appropriately suited for the type of decision authorized.	**No provision.**	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law **24.263. Declaratory rulings by agencies as to applicability of statutes, rules, or orders; effect, procedure, changing rulings, review**
(2). **Declaratory Orders.** On request of any party, an agency may issue an informal order addressing the applicability of a statute administered by the agency or of a rule or order of the agency to an actual state of facts. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration, and agency resolution. Such a declaratory order is binding on the agency. An agency may not retroactively change a declaratory order, but nothing in this subsection prevents an agency from prospectively changing such an order.	Sec. 85. On request of an interested person, an agency may issue a declaratory order ~~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 procedural rule the form for such a request and procedure for its submission, consideration and disposition and the time limits within which the agency will deny or issue a declaratory order. In the absence of a procedural rule establishing a time limit for action, a request for a declaratory order shall be deemed to be denied 90 days after it is received by the agency. A declaratory order ~~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 order ~~ruling~~, but nothing in this subsection prevents an agency from prospectively changing a declaratory order ~~ruling~~. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. A decision not to issue a declaratory order is not subject to judicial review.	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.

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(3). **Licensing Decisions.** Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license not required by statute to follow a hearing, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. Except as otherwise provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, or the regulated occupations support enforcement act, the licensee shall be given an opportunity to show or achieve compliance with all lawful requirements for retention of the license. Within a reasonable time, the agency must inform the licensee of the results of the agency's compliance determination. If as a result of the agency's compliance determination the agency finds it necessary to proceed with suspension or revocation, the agency must so proceed within a reasonable time of its compliance determination.	Sec. 91. (1) When licensing is required by statute or constitution to be preceded by notice and an opportunity for hearing, the provisions of this act governing contested cases apply. The agency may, by procedural rule, provide that initial licensing or other activity related to licensing shall be subject to the provisions of this act governing a contested case or to such portions of the provisions governing a contested case as the agency shall in its discretion deem appropriate. Sec. 91. (2) Same as Current Law.	CHAPTER 5. LICENSES. **24.291. Notice and hearing required, applicability of act; license application, effect on expiration of existing 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 the reviewing court. This subsection does not affect valid agency action then in effect summarily suspending such license under section 92.

1997 Croley Proposal	1989 LeDuc Proposal	Current Law **24.292. Suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of licenses; notice, opportunity to be heard; summary suspension**
If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in an 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 licensee's opportunity to show compliance. Such opportunity shall be promptly commenced and determined.	Sec. 92. (1) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license: (a) an agency shall give written notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. ~~Except as otherwise provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, or the regulated occupations support enforcement act,~~ (b) the licensee shall be given an informal opportunity to show or achieve compliance with all lawful requirements for retention of the license. This opportunity need not be on the record, may be conducted by any representative of the agency, including those who conducted the inspection or investigation, which forms the basis of the agency's intended action, and may be conducted on the licensee's premises. Sec. 93. If the agency has reasonable grounds to believe that the conduct of the licensee threatens ~~finds that~~ the ~~public~~ health, safety or welfare of the public or of any person receiving	Sec. 92. Before the commencement of proceedings for 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 which warrant the intended action. Except as otherwise provided in the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, or the regulated occupations support enforcement act, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license. 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.

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An agency may forego a compliance determination if: (a) the agency deems circumstances to constitute an emergency situation; (b) the licensee's conduct threatens the public health, safety, or welfare or presents a threat to the health, safety, or welfare of persons who receive a benefit from the licensing requirement, such as benefits of services, housing, treatment, care, or support; (c) the licensee's conduct justifies revocation regardless of future compliance; or (d) the licensee's conduct constitutes a pattern of intentional and deliberate violation of the terms or conditions of the license.	services, housing, treatment, care, or support from a licensee, and determines that those grounds justify emergency action, it may summarily suspend a license. Such suspension shall take effect upon the date of the order or the date of service of the order upon the licensee, whichever is later, and shall remain in effect during the course of the proceedings. An order summarily suspending a license shall include a concise statement of the facts and law justifying the order. An agency decision to proceed summarily may be based upon such facts as it regards to be sufficient to implicate the public health, safety, or welfare of persons receiving services, housing, treatment, care, or support from the licensee. The facts relied upon need not meet the requirements of the rules of evidence provided for contested cases, nor must the decision be based upon a preponderance of evidence. ~~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. Upon judicial review of a final licensing decision, the court shall not apply the provisions of section 106(1)(d) to the decision of the agency to proceed[ings] under this section.	

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Where the number of license applicants exceeds the number of licenses, the licensing agency shall hold a comparative hearing designed to select from among applicants those most qualified according to statutory criteria. Where the relevant statute does not provide comparative criteria, the agency shall promulgate rules governing the allocation of available licenses on a random, first-come, or otherwise neutral basis.	**No provision.**	**No provision.**
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 the reviewing court. This provision does not affect valid agency action then in effect summarily suspending such license under this subsection.	**No provision.**	**No provision.**

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Section 403. Formal Orders. (1). Where an agency is authorized by statute to make decisions that are not rules, and where the legislation authorizing such decisions intends for those decisions to be made following a formal evidentiary hearing on a record, providing parties with the opportunity to cross-examine adverse witnesses and present rebuttal evidence, the agency must employ the formal adjudication process of Section 404. (2). When licensing is required by statute to be preceded by a hearing on a record, providing parties with the opportunity to cross-examine adverse witnesses and present rebuttal evidence, the agency must employ the formal adjudication process of Section 404. (3). An agency may adopt procedural rules, not inconsistent with Section 404, further specifying the details of its formal adjudication process, including but not limited to rules providing for discovery and depositions.	**No provision.**	**No provision.**

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Section 404. The Formal Adjudication Process: Notice; Scheduling; Answer; Failure to Appear; Intervention; Hearings; Ex Parte Communications; Subpoena; Administrative Law Judges; Evidence; Burdens of Going Forward, Proof, and Persuasion.		**CHAPTER 4. PROCEDURES IN CONTESTED CASES.** **24.271. Opportunity to be heard; reasonable notice of hearing, necessity, contents; service of legislators**
(1). **Notice.** The parties to an adjudication shall be given an opportunity for a hearing without undue delay. Where an agency deems appropriate and when justice and efficiency would be served, hearings may utilize video conferencing technology. They shall also be given a reasonable notice of such hearing, which shall include:	**Sec. 71. (2) A contested case may be commenced by a person filing an administrative complaint or petition for hearing, or by the agency giving notice. The complaint, petition, or notice shall include:**	**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(s), and nature of the hearing;	**(e) If the matter is commenced by a notice of hearing, a statement of the date, hour, place, and nature of the hearing.** **(f) Unless otherwise specified by the agency, the hearing shall be held at its principal office.**	**(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 under which the agency is holding the hearing;	**(b) A statement of the legal authority and jurisdiction under which relief or action is sought ~~the hearing is to be held~~.**	**(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; and	**(c) A reference to the particular sections of the statutes and rules involved.**	**(c) A reference to the particular sections of the statutes and rules involved.**

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(d) a plain statement of the issues to be addressed at the hearing. If the agency or other party is unable to explain the issues in detail at the time the notice is given, the initial notice may summarize the main issues involved. Thereafter, on request the agency or other party shall furnish a more detailed statement on the issues. Upon request the party to an adjudication, the agency shall also furnish a copy of the text of the statute and rules relevant to the adjudication.	(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 complaint, petition, or notice is provided ~~given~~, unless the initial complaint, petition, or notice may state the issues involved. Thereafter on application the agency or other person ~~party~~ shall furnish a more definite and detailed statement on the issues.	(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.
(2). **Notice to Legislators.** 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. A member of the legislature shall not be privileged from service of notice or other process pursuant to this Section, however, if such service of notice or process is executed by certified mail, return receipt requested.	Sec. 71. (4) Same as Current Law.	(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.
		24.272. Failure to appear; pleadings; evidence; arguments; cross- examination
(3). **Answer.** A party who has been served with a notice of hearing may file a written answer before the date set for hearing. The agency involved may, by agency rule, require that a party served with notice of a hearing file a written response.	Sec. 71. (5) A party who has been served with an administrative complaint, petition, or notice of hearing may file a written answer before the date set for hearing.	Sec. 72. (2) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

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(4). **Scheduling.** When the presiding officer knows that a party to an adjudication is a member of the legislature of this state, and the legislature is in session, or when the presiding administrative law judge knows that such party 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 adjudication shall be continued by the administrative law judge to a non-meeting day. When the administrative law judge 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 taking of the legislator's testimony as a witness shall be postponed to the earliest practicable non-meeting day.	Sec. 72. (6)(a) Same as Current Law. Sec. 72. (6)(b) Same as Current Law.	Sec. 80. (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. (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.

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	Sec. 72. (6)(c) Same as Current Law.	Sec. 80. (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.

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(6). **Failure to Appear.** If a party fails to appear at a hearing or fails to file a required answer 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. An agency may issue a default decision against nonappearing parties, and may by procedural rule provide for default decisions categorically against parties who fail to appear. Such default decisions shall be unappealable, either within the agency or to a court, provided that the agency has provided notice that failure to appear may result in an unappealable default decision adverse to the nonappearing party.	Sec. 71. (6) 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. An agency by procedural rule establish procedures for the entry of default orders when a party fails to appear or fails to file an answer, if the agency's procedural rules require the filing of an answer. Such procedures shall describe the type of case and the procedures under which default orders may issue, and shall set forth time limits and grounds on which orders entered upon default can be set aside. If a party who has filed an administrative complaint or a petition fails to appear, the case may be dismissed.	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.

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(7). **Intervention.** A party other than the agency or a party served with notice under this Section may petition the presiding administrative law judge for permission to intervene in an adjudication. Intervention must be granted if the party seeking intervention has demonstrated in a written petition submitted at least three weeks before the scheduled hearing date that the adjudication will affect that party's direct legal interests, provided that justice and the orderly and prompt conduct of the adjudication will not be impaired by allowing the intervention. The administrative law judge must grant or deny such a petition to intervene not later than two weeks before the scheduled hearing date. Otherwise, intervention may, in the discretion of the administrative law judge, be granted to any party when the interests of justice so dictate and when allowing intervention would not impair the orderly and prompt conduct of the adjudication. Intervention may be limited or conditioned at any time and in any manner, including limiting the intervenor to specific issues, restricting discovery, cross-examination, or requiring intervenors to combine their presentations of evidence, arguments, or other participation in the adjudication. Permission to intervene may also be limited to the filings of briefs. Permission to intervene once granted may be revoked if the claims asserted by an intervenor prove exaggerated or untrue, or where the decision to allow intervention was otherwise improvidently made.	Sec. 72. (5). Parallels Croley proposal.	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
(8). **Hearings.** Hearings in adjudications shall be open to the public unless the agency determines either that the privacy interests of a party seeking a closed hearing outweigh the interest in the public in having an open hearing or that an open hearing would result in the disclosure of trade secrets or proprietary information. Determinations whether a hearing shall be open shall be made by the presiding administrative law judge in a separate, closed session. Such determinations shall remain sealed, but shall become part of the adjudication record. At a hearing, the parties to an adjudication shall be given an opportunity to present oral arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact. To the extent that the interests of the parties will not be substantially prejudiced thereby, however, an agency may provide for submission of all or part of the evidence in written form. The parties shall also be given an opportunity to cross-examine witnesses, including authors of any document prepared by, on behalf of, or for use of the agency and offered in evidence, and to submit rebuttal evidence. 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. Depositions may be used in lieu of other evidence when taken in compliance with the general court rules.	Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay. A hearing shall be open to the public unless, on the request of a party, the agency finds and includes as a sealed part of the record, that an open hearing would constitute an unwarranted invasion of personal privacy, or would result in the disclosure of trade secrets or proprietary information, which outweigh the public interest in open hearings. Sec. 71. (2) Same as Current Law. Sec. 75. (5) Same as Current Law. Sec. 74. (1) Same as Current Law.	Sec. 72 (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. 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

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
		the extent and in the manner appropriate to its proceedings.
An agency that relies on a witness in an adjudication, 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 statements or reports available to opposing parties for use on cross-examination. On a request for identifiable agency records, with respect to material facts in dispute, except records related solely to the internal procedures of the agency or exempt from disclosure by law, an agency shall make such records promptly available to a party. Hearings 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.	Sec. 75. (6) Same as Current Law.	Sec. 74 (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 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.
	Sec. 83. (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.~~ and transcribed unless the agency determines by procedural rule that transcripts shall not available only upon request of party. The agency may charge to each party requesting a copy of a transcript, or portion of transcription made, a party may request the transcription at the party's expense, but the agency shall pay for a proportional share but need not be transcribed unless requested by a party who shall pay for the transcription of the portional share of the transcription costs if it requests a copy.	Sec. 86 (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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(9). **Ex Parte Communications.** Unless required for disposition of an ex parte matter authorized by law, an administrative law judge or any other member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a formal adjudication 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 subsection does not apply, however, to an agency employee or party representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in an adjudication 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.	**Sec. 81. (6)** Unless required for disposition of an ex parte matter authorized by law, a presiding officer, member or employee of an agency assigned to make a decision in a case or to assist the agency in making a decision in a case, and the deciding authority in the case ~~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.	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.

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(10). **Subpoena.** The administrative law judge may, in the administrative law judge's discretion, issue subpoenas requiring the attendance and testimony of material witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the administrative law judge shall revoke a subpoena if the evidence sought 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 the subpoena is invalid or unnecessary. The agency or other party to the adjudication may request in writing that the administrative law judge quash subpoenas issued under this subsection. 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 a court order requiring compliance. Noncompliance may, in the administrative law judge's discretion, provide sufficient grounds for drawing negative inferences concerning subpoenaed matter against the noncomplying party.	Sec. 73. Same as Current Law.	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.

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(11). **Administrative Law Judges.** One or more persons designated by statute or one or more hearing officers designated and authorized by the agency to oversee formal adjudications shall preside impartially over hearings. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias, conflict of interest, or other grounds for disqualification of an administrative law judge, the agency shall determine the matter as a part of the record in the case. When an administrative law judges designated to conduct an adjudication is disqualified or it is impracticable for him or her to continue the hearing, another may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom. An administrative law judge may do all of the following:	Sec. 72. (1)-(2) Same as Current Law, adding to grounds for disqualification "prejudice, interest, or any other cause for which a judge may be disqualified."	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.
	Sec. 72. (4) Same as Current Law, but deletes (f).	Sec. 80. (1) A presiding officer may do all of the following:
(a) administer oaths and affirmations;		(a) Administer oaths and affirmations.
(b) sign and issue subpoenas in the name of the agency;		(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;		(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;		(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.

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(e) direct the parties to appear and confer to consider simplification of the issues by consent of the parties;		(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 Section 406; and		(f) Act upon an application for an award of costs and fees under sections 121 to 127.
(g) prepare a final decision, or a proposed or recommended final decision, for an adjudication under Section 405.		
(12). **Evidence.** The rules of evidence as applied in a nonjury civil case in circuit court shall be generally followed in adjudication as far as practicable. An agency shall admit and give probative effect, however, to any competent and credible evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, incredible, or unduly repetitious evidence may in the agency's discretion be excluded, and 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. Evidence, including records and documents in possession of an agency of which it desires to avail itself, shall be offered and made a part of the record. Factual information not made part of the record shall not be considered in the determination of the case, except that the administrative law judge may take official notice of judicially cognizable facts and of technical or scientific facts within the agency's specialized	Sec. 75. Same as Current Law, with the exception of references to "Michigan" rules of evidence and "reasonable prudent persons."	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.
	Sec. 75. (7) Same as Current Law.	Sec. 76. Evidence in a contested case, including records and documents in possession of an agency of 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

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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.	Sec. 75. (8) Same as Current Law.	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.
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. The parties to an adjudication may, by a stipulation in writing filed with the agency, 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.	Sec. 74. (3) Same as Current Law, but deletes last sentence, "Parties are requested to thus agree upon facts when practicable."	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.
	Sec. 72. (4) Same as Current Law, but lists this as one of the presiding officer's powers.	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.

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(13). **Witness Alleged Victim of Abuse.** In an adjudication where a witness testifies as an alleged victim of sexual, physical, or psychological abuse—that is, of an injury to a child's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress—such 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. Such 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 shall 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. All persons not necessary to the proceeding shall be excluded during the witness's testimony. This section is in addition to other protections or procedures afforded to a witness by law or court rule.	Sec. 76. Same as Current Law.	Sec. 75a. (1)(b) "Witness" means an alleged victim under subsection (2) who is either of the following: (i) A person under 15 years of age. (ii) A person 15 years of age or older with a developmental disability. Sec. 75a. (2) This section only applies to a contested case where a witness testifies as an alleged victim of sexual, physical, or psychological abuse. "Psychological abuse" means an injury to a child'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 shall 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

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		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. 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.
(14). **Burdens of Going Forward, Proof, and Persuasion.** Unless allocated otherwise by statute, the proponent of a decision shall have the burden of going forward and the burden of proof. In licensing decisions subject to this Section, these burdens shall borne by the applicant for an initial license, for a new license in regard to activity of a continuing nature, and for reinstatement of a license previously suspended or revoked. In all other formal licensing decisions, including the denial of renewal of an existing license, these burdens shall be borne by the licensing agency. The burden of persuasion in a formal adjudication shall be the preponderance-of-the-evidence standard as applied in civil cases under Michigan law.	Sec. 75. (1) Except as otherwise provided by statute: (a) The proponent of a decision shall have the burden of going forward and the burden of proof.	(7) This section applies to hearings beginning on or after January 1, 1988. (8) This section shall take effect January 1, 1988. **No provision.**

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		24.281. Proposal for decision, necessity, service, exceptions, argument, contents, review; finality of decision; waiver
No provision.	Sec. 81. (1)-(4). Procedural revisions consistent with the proposal-for-decision method of agency decision making.	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.

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Section 405. Final Decisions. (1). Except as otherwise provided by law, disposition of a formal adjudication may be made by stipulation, agreed settlement, consent order, waiver or other method agreed upon by the parties, or by final written decision of the agency. (2). An agency's final, written decision in an adjudication shall be rendered either by the presiding administrative law judge or, where the presiding administrative law judge is authorized by statute or agency rule to prepare a proposed or recommended decision, by the agency member or body authorized by statute or agency rule to make the decision. Such final decision shall be issued within a reasonable period. Every decision shall reflect the agency's own expertise and policy goals, and shall be based upon consideration of the record as a whole, though where a final decision is rendered by some agency member or body other than the presiding administrative law judge the agency need not supply that member or body with a transcript unless one was prepared under Section 408(8) or unless the agency deems that a transcript is necessary for an informed final decision. Every decision shall be supported by competent, material, and substantial evidence. The final decision shall include findings of fact and conclusions of law separated into sections captioned "findings of fact" and "conclusions of law," respectively.		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.

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Findings of fact shall be based exclusively on the evidence and on matters officially noticed under Section 404(12). Findings of fact shall be accompanied by a concise and explicit statement of the underlying evidence supporting them. If a party to the adjudication submitted proposed findings of fact or conclusions of law that would control the decision or order, the decision shall include a ruling upon each. Each conclusion of law shall be supported by authority and reasoned opinion. (3). A copy of the final decision shall be delivered or mailed immediately to each party and to his or her attorney of record. (4). In the absence of the filing of exceptions, rehearing, or appeal by the agency within the time allowed by statute or provided by rule, the decision shall become the final decision of the agency. Final decisions shall become effective 15 days from the day they are issued.		

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Section 406. Awards of Costs and Fees: Availability; Criteria; Payment; Exceptions; Report to Legislature.		
(1). **Availability.** The administrative law judge who conducts a formal adjudication under Section 404 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 administrative law judge finds that the position of the agency to the proceeding was frivolous. The administrative law judge may reduce the amount of the costs and fees to be awarded, however, or deny an award, to the extent that the party seeking the award engaged in conduct which unduly and unreasonably protracted the case. The final action taken by the administrative law judge under this section in regard to costs and fees shall include written findings as to that action and the basis for the findings. 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, based upon the prevailing market rate for the kind and quality of the services furnished, subject to the following:	**Deleted.**	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.

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(a) the expenses paid for an expert witness shall be reasonable and necessary as determined by the administrative law judge; and (b) an attorney or agent fee shall not be awarded at a rate of more than $100.00 per hour unless the administrative law judge 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. 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. 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 party who has a private interest in the matter or to an agency required by law to commence a case upon the action or request of another party. Nor does this section does not apply to an agency that has such a minor role as a party in the adjudication in comparison to other nonprevailing parties so as to make its liability for costs and fees under this section unreasonable, unjust, or unfair.	**Deleted.**	(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.

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An application for costs and fees and the awarding thereof under this chapter shall not delay the entry of a final order in an adjudication.		
If a prevailing party recovers costs and fees under this chapter in an adjudication, the prevailing party is not entitled to recover those same costs for that adjudication under any other law.		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.
(2). **Criteria.** To find that an agency's position was frivolous, the administrative law judge shall determine that at least one of the following conditions has been met:		Sec. 123. (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.
(a) the agency's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party;		Sec. 123. (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.
(b) the agency had no reasonable basis to believe that the facts underlying its legal position were in fact true; or		
(c) The agency's legal position was devoid of arguable legal merit.		Sec. 123. (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:
If the parties 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:		

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(a) that a final order not subject to further appeal other than for the judicial review of costs and fees provided for in this section has been entered in regarding the subject matter of the adjudication; (b) that the position of the agency was frivolous; (c) that the party is a prevailing party; (d) 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; and (e) 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. (3). **Payment.** 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.	**Deleted.**	(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. (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.

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(4). **Exceptions.** This section does not apply to any of the following: (a) any 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 421.73 of the Michigan Compiled Laws; and (e) Department of Social Services 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.	**Deleted.**	Sec. 115. (3) Chapter 8 [Cost Awards] 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 421.73 of the Michigan Compiled Laws. (e) Department of social services 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.

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(5). **Report to Legislature.** 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 section 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.	**Deleted.**	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.

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Section 407. High-Volume Formal Orders.		
(1). Where an agency is authorized by statute to make decisions that are not rules, and where such statutory authority requires that such decisions follow a hearing, but the legislature does not intend a formal, evidentiary hearing providing parties with the opportunity to cross-examine adverse witnesses and to present rebuttal evidence, the agency must employ the high-volume adjudication process of Section 408.	**No provision.**	**No provision.**
(2). When licensing as defined by this Act is required by statute to be preceded by a hearing, but not a formal, evidentiary hearing providing parties with the opportunity to cross-examine adverse witnesses and to present rebuttal evidence, the agency must employ the high-volume adjudication process of Section 408.		
(3). An agency may adopt procedural rules, not inconsistent with Section 408, further specifying the details of its adjudication process.		

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Section 408. The High-Volume Adjudication Process: Notice; Failure to Appear; High-Volume Hearings; Subpoena; Administrative Law Judges; Evidence		
(1). **Notice.** The parties to a high-volume adjudication shall be given an opportunity for a hearing without undue delay. Where an agency deems appropriate and when justice and efficiency would be served, hearings may utilize video conferencing technology. They shall also be given a reasonable notice of such hearing, which shall include: (a) a statement of the date, hour, place(s), and nature of the hearing; (b) a statement of the legal authority under which the agency is holding the hearing; (c) a reference to the particular sections of the statutes and rules involved; and (d) a plain statement of the issues to be addressed at the hearing.	**No provision.**	**No provision.**

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(2). **Failure to Appear.** If a party fails to appear at a hearing or fails to file a required answer 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. An agency may issue a default decision against nonappearing parties, and may be procedural rule provide for default decisions categorically against parties who fail to appear. Such default decisions shall be unappealable, either within the agency or to a court, provided that the agency has provided notice that failure to appear may result in an unappealable default decision adverse to the nonappearing party. (3). **High-Volume Hearings.** At a high-volume hearing, the parties to an adjudication shall be given an opportunity to present oral arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact. To the extent that the interests of the parties will not be substantially prejudiced thereby, however, an agency may provide for submission of all or part of the evidence in written form. Hearings at which evidence is presented shall be recorded, but need not be transcribed unless requested by the party who shall pay for the transcription of the portion requested, except as otherwise provided by law.	**No provision.**	**No provision.**

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(4). **Subpoena.** The administrative law judge may, in the administrative law judge's discretion, issue subpoenas requiring the attendance and testimony of material witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the administrative law judge shall revoke a subpoena if the evidence sought does not relate to the 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 the subpoena is invalid or unnecessary. The agency or other party to the adjudication may request in writing that the administrative law judge quash subpoenas issued under this subsection. 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 a court order requiring compliance. Noncompliance may, in the administrative law judge's discretion, provide sufficient grounds for drawing negative inferences concerning subpoenaed matter against the noncomplying party.	**No provision.**	**No provision.**

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(5). **Administrative Law Judges.** One or more persons designated by statute or one or more hearing officers designated and authorized by the agency to oversee formal adjudications shall preside impartially over hearings. On the filing in good faith by a party of a timely and sufficient affidavit of personal bias, conflict of interest, or other grounds for disqualification of an administrative law judge, the agency shall determine the matter as a part of the record in the case. When an administrative law judge designated to conduct an adjudication is disqualified or it is impracticable for him or her to continue the hearing, another may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom. As authorized by the relevant agency, an administrative law judge may do all of the following: (a) administer oaths and affirmations; (b) sign and issue subpoenas in the name of the agency; (c) regulate the courser of the hearings; (d) prepare a decision or a proposed decision including, as applicable, findings of fact and conclusions of law.	**No provision.**	**No provision.**

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(6). **Evidence.** The rules of evidence as applied in a nonjury civil case in circuit court shall be generally followed in adjudication as far as practicable. An agency shall admit and give probative effect, however, to any competent and credible evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, Irrelevant, immaterial, incredible, or unduly repetitious evidence may in the agency's discretion be excluded, and 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. Factual information not made part of the record shall not be considered in the determination of the case, except that the administrative law judge may take official notice with the agency';s specialized knowledge.	**No provision.**	**No provision.**

1997 Croley Proposal	1989 LeDuc Proposal	Current Law
Section 409. Rehearings and Intra-Agency Appeals.		
(1). **Rehearings.** Where for justifiable reasons the record of testimony made at a hearing is found by the agency to be inadequate for purposes of judicial review, the agency on its own motion or on request of another party to an adjudication shall order a rehearing. 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 possible agency reconsideration and judicial review. An original decision or order may be amended or vacated after the rehearing.	Sec. 84. (1) Where for justifiable reasons the record of testimony made at the hearing is found by the agency to be inadequate for purposes of final decision by the agency or judicial review, the agency on its own motion or on request of a party shall order a rehearing in whole or in relevant part. Sec. 84. (1) Substantially the same as Current Law. Sec. 84. (2) Substantially the same as Current Law.	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.

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(2). **Intra-Agency Appeals.** An agency shall hear appeals of final decisions, by any party to an adjudication, as required or authorized by statute or agency rule, provided that the party initiates an appeal within 30 days of the original order. Once a party provides notice that it seeks agency appeal, all parties to the adjudication shall have 30 days in which to submit their arguments in writing to the agency's appellate decisionmaker. On appeal, the agency's appellate decisionmaker or decisionmaking body shall have all the powers which the agency had during the original hearing. The scope of agency appeals shall focus on conclusions of law and matters of agency policy. Oral argument may be allowed as the agency deems necessary. Factual determinations originally made by the administrative law judge shall stand unless not supported by substantial evidence, in which event the matter may be rendered to the administrative law judge for further factual development. Decisions by the agency's appellate decisionmaker shall be based on the whole record, shall be made within a reasonable time, and shall reflect conclusions of fact and law and the agency's policy expertise.	**No provision.**	**No provision.**

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CHAPTER FIVE. JUDICIAL REVIEW OF AGENCY ACTION. **Section 501. Availability of Judicial Review: Agency Action; Jurisdiction.**		
(1). **Agency Action.** Any party aggrieved or adversely affected by final agency action may seek judicial review of that agency action in the courts, in accordance with the general court rules, and subject to the requirements of this chapter. (2). **Jurisdiction.** Judicial review of agency action shall follow any statutory review proceeding in any court as designated by the legislature to be applicable to a specific agency or a specified type of agency decision. In the absence of such designated courts and proceedings, the Court of Appeals shall have jurisdiction to conduct judicial review of agency action. Judicial review of agency action shall be by claim of appeal in accordance with Section 502. *[(2). Jurisdiction. 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 the state, or in the circuit court for Ingham County.]*	Sec. 101. (2) When a person has exhausted all administrative remedies available within an agency, and is aggrieved by ~~a~~ final ~~decision~~ agency action as defined in section 2(d) ~~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 and in the absence of such provision, as provided in this chapter. 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. Sec. 102. Same as Current Law.	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. 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.

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Section 502. Claim of Appeal [Petition for Review]: Venue; Exception; Contents of Petition; Stay of Enforcement of Agency Action.		
(1). **Venue.** A claim of appeal [petition for review] shall be filed in the Court of Appeals for the division where the party seeking judicial review resides, or for the division in which that party has his or her principal place of business.	Sec. 103. (1)-(2) Same as Current Law.	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). **Exception.** 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 claim of appeal [petition for review] shall be filed:		(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:
(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; or,		(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.		(b) For an adoptee not residing in this state, in the probate court for the county in which the petition for adoption was filed.

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(3). **Contents of Claim [Petition].** A claim of appeal [petition for review] shall contain a concise statement of:	Sec. 103. (3) A petition for review shall contain a concise statement of:	(3) A petition for review shall contain a concise statement of:
(a) the nature of the agency action of which review is sought;	(a) The nature of the action ~~proceedings~~ as to which review is sought.	(a) The nature of the proceedings as to which review is sought.
(b) the facts on which venue is based;	(b) The factual background of the matter ~~facts on which venue is based~~.	(b) The facts on which venue is based.
(c) the grounds on which relief is sought; and	(c) The factual and legal grounds on which relief is sought.	(c) The grounds on which relief is sought.
(d) the declaratory, injunctive, or other relief sought.	(d) The relief sought.	(d) The relief sought.
When seeking review of a final rule or formal order, the petitioning party shall also include, as an exhibit accompanying the claim of appeal [petition for review], a copy of the final agency rule or formal order of which review is sought.	(4) The petitioner shall attach to the petition, as an exhibit, a copy of the agency action ~~decision or order~~ of which review is sought. If the agency action was not reduced to written form, the petitioner shall attach to the petition, as an exhibit, an affidavit in accordance with the general court rules describing the agency action of which review is 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.
(4). **Transmittal of Record.** Within 60 days after service of the petition for review, or within such further time as the court allows, the agency shall transmit to the reviewing court the original or certified copy of the entire record of all relevant proceedings and agency decisions. The agency shall identify all relevant findings of fact, considerations of policy, and conclusions of law, and shall include a prepared transcript of any recorded testimony. As the reviewing court deems appropriate, the court may permit subsequent corrections to the record. Parties to the proceedings	Sec. 104. (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. If the action was not conducted as a hearing on the record, the agency shall transmit to the court an original or certified copy of its entire file relevant to the petition, unless the parties to the proceedings for judicial review stipulate that the record be shortened. A party unreasonably	Sec. 104. (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.

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for judicial review may stipulate that the record be shortened.	refusing to ~~so~~ stipulate to shortening the record may be taxed by the court for the additional costs. The court may permit subsequent corrections to the record.	
(5). **Stay of Enforcement of Agency Action.** The filing of a claim of appeal [petition] does not automatically stay enforcement of the agency action, but the agency may grant, or the reviewing court may order, a stay upon appropriate terms as justice or efficiency requires.	Sec. 104. (1) . . . 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. Sec. 104. (3) Substantially the same as current law.	Sec. 104. (1) . . . 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. (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.
Section 503. Requirements: Timing, Standing, Exhaustion. (1). **Timing.** A claim of appeal [petition for review] shall be filed in the court within 60 days of the agency action of which judicial review is sought.	Sec. 104. (1) A petition shall be filed in the court within 60 days after the date of mailing notice of the final agency action ~~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. If the agency action is the failure to act, the petition shall be filed in the court within 180 days after the date upon which the duty to act arose. . . .	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. . . .

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(2). **Standing.** A petition for review may be brought by any party so entitled under another statute, or by any party aggrieved or adversely affected by final agency action, provided that: (a) the agency's action or inaction has or is likely to prejudice that party's rights or interests; (b) that party's rights or interests should have been considered by the agency; and (c) a favorable judgment by the court would significantly redress the injury to that party's rights or interests.	**No provision.**	**No provision.**
(3). **Exhaustion.** Any party seeking review of agency action must first exhaust all administrative remedies available, if any, within the relevant agency; preliminary or intermediate agency action or ruling is not subject to immediate judicial review. A court may grant leave for review of preliminary or intermediate agency action, however, if review of the agency's final action would not provide an adequate remedy or if exhaustion of administrative remedies would serve no useful purpose. Exhaustion of administrative remedies does not require filing of a petition for rehearing or any other reconsideration by the agency, unless a statute or the agency's own rules specifically require an application for rehearing or reconsideration before judicial review is sought.	**No provision.**	**No provision.**

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Section 504. Record on Review.		
(1). **Agency Record.** Judicial review shall be confined to the record as presented under Section 502(4).	Sec. 105. Same as Current Law.	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.
(2). **Briefs.** The reviewing court shall receive written briefs and, on request, hear oral arguments.	**No provision.**	**No provision.**

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Section 505. Scope of Review.		
(1). The reviewing court shall interpret all applicable constitutional and statutory provisions, determine the meaning or application of all of the relevant terms of an agency action, and decide all relevant questions of law.	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 agency action ~~a decision or order of an agency~~ if substantial rights of the petitioner have been prejudiced because the agency action ~~decision or order~~ is any of the following:	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:
(2). Except when a statute explicitly provides for a different scope of review in place of, and not merely in addition to, the following, the reviewing court shall hold unlawful and set aside any agency action that is:		
(a) in violation of the Constitution;	(a) In violation of the constitution or a statute.	(a) In violation of the constitution or a statute.
(b) in excess of the agency's statutory authority or jurisdiction or otherwise in violation of law;	(b) In excess of the statutory authority or jurisdiction of the agency, or short of statutory right.	(b) In excess of the statutory authority or jurisdiction of the agency.
(c) without observance of procedure required by this Act, the agency's statue, other applicable statutes, or the agency's own procedural rules; or	(c) Made upon unlawful procedure resulting in material prejudice to a party.	(c) Made upon unlawful procedure resulting in material prejudice to a party.
	(d) In review of agency proceedings conducted under chapter 4, not supported by competent, material and substantial evidence on the whole record. The court shall apply the rules of evidence in the same manner as applied in the agency under section 75 and shall not overturn an agency decision solely because the preponderance of the evidence is not wholly constituted of evidence admissible under the Michigan rules of evidence.	(d) Not supported by competent, material and substantial evidence on the whole record.
(d) arbitrary, capricious, an abuse of discretion, or without genuine evidentiary or factual support.	(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.	(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

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	(f) Affected by other substantial and material error of law.	(f) Affected by other substantial and material error of law.
(3). Where the validity of agency action under Subsection (2)(b) depends upon the meaning of a statutory term, the reviewing court shall: (a) for statutory terms whose precise meanings the legislature has unambiguously supplied, enforce the meaning the legislature intended; (b) for statutory terms whose precise meanings were neither unambiguously supplied by the legislature nor legislatively delegated to the agency, employ the traditional tools of statutory interpretation when interpreting the terms of statutes that the agency is not specifically charged to administer and that do not fall within the agency's expertise; (c) for statutory terms whose precise meanings were neither unambiguously supplied by the legislature nor legislatively delegated to the agency, defer to the agency's interpretation of terms of statutes that the agency is specifically charged to administer or that fall within the agency's special expertise, so long as the agency's interpretation is not unreasonable, even if not the interpretation the court would have adopted; and,	**No provision.**	**No provision.**

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(d) for statutory terms whose full meanings the legislature intended the agency to supply, defer to the agency's interpretation, so long as the agency's interpretation is not arbitrary, capricious, or an abuse of discretion.		
(4). In addition to Subsections (2) and (3), the reviewing court shall also hold unlawful and set aside any formal agency order and any declaratory order that is not supported by competent, material, and substantial evidence, viewing the adjudicatory record as a whole.	**No provision.**	**No provision.**
Section 506. Forms of Relief.		
(1). The reviewing court shall, as the court deems appropriate, affirm, reverse, or modify the agency's action.	Sec. 106. (2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings. <u>The court shall authorize only such actions as are included within the powers granted to the agency in the underlying statute or statues on which the agency's decision was based.</u>	Sec. 106. (2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.
(2). The reviewing court shall also compel agency action unlawfully withheld or delayed.		
(3). In addition or in the alternative to the above, the reviewing court may also remand the matter to the agency for further proceedings. If it is shown to the satisfaction of the court that an inadequate record was made by the agency or that additional evidence is material, the court shall remand to the agency for further development of the factual record. The agency may modify its position because of the additional evidence, and shall file with the court the additional evidence and any modified action that the agency may have taken.		

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(4). The court reviewing the final action of an administrative law judge regarding the award of costs and fees under Section 406 may modify that action if the award is arbitrary, capricious, an abuse of discretion, or wholly without factual support. An award of costs and fees made by a court under this subsection 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.	**Deleted.**	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.
		24.263. Declaratory rulings by agencies as to applicability of statutes, rules, or orders; effect, procedure, changing rulings, review
No provision.	Sec. 101. (1) Substantially the same as Current Law.	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

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		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.
		24.324. Entry of final order
No provision.	**Deleted.**	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.

ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE: RECOMMENDATION TO THE LEGISLATURE

In 1994, the Michigan Law Revision Commission recommended to the Legislature that it repeal Article 6, Bulk Sales, of the Uniform Commercial Code. M.C.L. §§ 440.6101-.6111. The Legislature took no action with regard to that recommendation. In 1997, the Commission received a report from Dawn Copley, a law student at Wayne State University Law School, prepared under the supervision of Professor John Dolan of Wayne State. It is their recommendation that Michigan repeal Article 6. To date, 35 states and territories have done so pursuant to the recommendation of the National Commission on Uniform State Laws.

The reasons for recommending repeal in 1994 are as valid today as they were then. Among those reasons are the following:

1. The bulk transfer law can be a trap for unwary buyers who fail to comply with an obscure provision of law.

2. The penalties for noncompliance are harsh.

3. The costs of compliance can be high and add unnecessary transaction costs.

4. Unsecured creditors of a seller in a bulk transfer are adequately protected under fraudulent conveyance legislation, and secured creditors do not need Article 6 for protection.

RECOMMENDATION

The Commission again recommends to the Legislature that it repeal Article 6 of the UCC.

GOVERNMENT E-MAIL AND PUBLIC DISCLOSURE LAWS: RECOMMENDATIONS TO THE LEGISLATURE

I. INTRODUCTION.

In its 1994 Annual Report, the Michigan Law Revision Commission published a study report entitled ELECTRONIC MAIL AND PUBLIC DISCLOSURE LAWS.[1] That study report noted that employees at almost all major Michigan government agencies and public universities use electronic mail ("e-mail") to communicate with each other and with the public. E-mail has replaced telephone calls and documentary communications in many instances, largely because of its speed and low cost. Michigan's public disclosure laws distinguish between telephone conversations (which are private) and documents (which are often subject to disclosure). As the 1994 study report observed, e-mail is a hybrid of these two communication media.[2]

In its follow-up examination of this issue in 1996, the Commission recommended to the Legislature in its 1996 Annual Report that the Legislature amend the Michigan Freedom of Information Act (FOIA) to address the government e-mail question. Regarding amendments to FOIA, the Michigan Law Revision Commission believes that government e-mail should generally be subject to FOIA disclosure. The Commission therefore recommended to the Legislature that it amend FOIA and expressly make e-mail subject to FOIA disclosure. However, the Commission further recommended that the Legislature postpone enacting this amendment until after the Legislature and the Commission had both carefully considered what exemptions from disclosure, if any, are necessary and should be included with the e-mail amendment.

With the caveat concerning exemptions from disclosure in mind, the Commission made the following recommendations to the Legislature:

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[1] Michigan Law Revision Commission, 29TH ANNUAL REPORT (1994). The study report was authored by Professor Kent Syverud of the University of Michigan Law School and former Executive Secretary of the Law Revision Commission, and Mr. Daniel F. Hunter, a student assistant to Professor Syverud and currently a practicing attorney in New York City.

[2] 29TH ANNUAL REPORT, at 7.

1. Add the following definition of "electronic mail" to the definitions section of FOIA, M.C.L. § 15.232:

> "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

2. Amend the definition of "writing," M.C.L. § 15.232(h), by adding the following sentence:

> "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. <u>"Writing" also includes digitally stored data, including, without limitation, electronic mail messages.</u>

Regarding amendments to the Management and Budget Act that might make e-mail subject to the maintenance and preservation provisions of that Act, the Commission believes that a general requirement that all e-mail be preserved would place an undue burden on state agencies. Accordingly, the Michigan Law Revision Commission recommended in its 1996 Annual Report that the Legislature amend M.C.L. § 18.1284(b) by adding the following sentence to the definition of "record" contained therein:

> Records shall not include electronic mail messages, regardless of whether such messages are produced or stored using state-owned equipment or software, unless such messages are segregated and stored by a state agency as evidence of the organization, functions,

policies, decisions, procedures, operations, or other activities of the government, or because of the value of the official governmental data contained therein.

During 1997, the Commission focused attention on what types of e-mail should be exempt from FOIA requests. Among the areas the Commission considered were (1) student-to-student e-mail, (2) student-to-third party e-mail, (3) advisory or deliberative materials used to assist elected officials in reaching decisions, and (4) computer programs and software. The Commission notes that in 1994 the Legislature enacted the Confidential Research Information Act, M.C.L. §§ 390.1551-390.1557, which exempts from FOIA disclosure various kinds of intellectual property and commercial information used in research activities at state universities and colleges.

II. STUDENT-TO-STUDENT AND STUDENT-TO-THIRD PARTY E-MAIL: RECOMMENDATION TO THE LEGISLATURE.

The Commission believes that the privacy interests of students attending Michigan colleges, universities, and schools outweighs the public interest in disclosure of student e-mail that might be stored in a government-owned server or computer. In fact, Section 13(1)(b)(iii) already provides that public records may be exempted from disclosure if such disclosure would "constitute an unwarranted invasion of personal privacy." Accordingly, the Commission recommends that an exemption be added to M.C.L. § 15.243 for student-to-student and student-to-third party e-mail that provides:

> (z) electronic mail messages authored by a student in attendance at a Michigan university, college, or school.

III. ADVISORY OR DELIBERATIVE MATERIALS USED TO ASSIST ELECTED OFFICIALS IN REACHING DECISIONS: RECOMMENDATION TO THE LEGISLATURE.

The Commission believes that the current exemption contained in Section 13(1)(n), M.C.L. § 15.243(1)(n), for communications and notes within a public body of an advisory nature is probably broad enough to include e-mail that is of an advisory nature. Nevertheless, to make it clear that e-mail is excepted, the Commission recommends that the Commission amend M.C.L. § 15.243(1)(n) to

read:

> Communications, ~~and~~ notes, and electronic mail within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determinations of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being section 423.201 to 423.216 of the Michigan Compiled Laws.

IV. COMPUTER PROGRAMS AND SOFTWARE: RECOMMENDATION TO THE LEGISLATURE.

While Michigan agencies are licensed to use computer programs and software, they have been expressly excluded from the definition of "public record," pursuant to 1997 amendments to FOIA, M.C.L. § 15.232(e). It would in any event violate federal copyright piracy laws to provide such programs or software pursuant to a FOIA request.

RECENT COURT DECISIONS IDENTIFYING STATUTES FOR LEGISLATIVE ACTION: A REPORT TO THE MICHIGAN LAW REVISION COMMISSION AND RECOMMENDATIONS TO THE LEGISLATURE

I. Introduction.

As part of its statutory charge to examine current judicial decisions for the purpose of discovering defects in the law and to recommend needed reform, the Michigan Law Revision Commission undertook a review of six Michigan Court of Appeals opinions that identify statutes and common law rules as potential candidates for legislative reform.

The Commission recommends that the Legislature take action with regard to two of those cases, *Walker-Bey v. Dep't of Corrections,* 222 Mich. App. 605, 564 N.W.2d 171 (1997)(timely filing of prisoner's petitions under M.C.L. § 791.255(2), M.S.A. § 28.2320-(55)(2)); and *Joerger v. Gordon Food Service, Inc.*, 224 Mich. App. 167, 568 N.W.2d 365 (1997)(taxation of paralegal costs under M.C.L. § 600.2405, M.S.A. § 27A.2405).

The Commission makes no recommendation with respect to the other four decisions, *Torrico v. Detroit-Macomb Hospital Corp.*, 1997 WL 51581, 73 Fair Empl. Prac. Cas. (BNA) 447 (1997)(prohibition against the use of MESC records in collateral proceedings, M.C.L. § 421.11(b)(1), M.S.A. § 17.511(b)(1)); *Halbrook v. Honda Motor Co.*, 1997 WL 392647, Prod. Liab. Rep. (BNA) P 15,034 (1997)(tort reform affecting motor vehicles); *Resteiner v. Sturm, Ruger & Co.*, 223 Mich. App. 374, 566 N.W.2d 53 (1997)(tort reform affecting handguns); and *In the Matter of the Estate of Henderson,* 1997 WL 433790 (1997)(government tort liability for injuries to passengers in a fleeing vehicle).

II. Adoption of the "Prison Mailbox Rule."

A. Background.

Prisoners appearing *pro se* must rely on prison authorities to have pleadings and other court correspondence mailed. In *Houston v. Lack*, 487 U.S.

266 (1988), a prisoner filed a *pro se* petition for a writ of habeas corpus. The petition was dismissed. The petitioner drafted a notice of appeal and deposited it with prison authorities for mailing. The notice was stamped "filed" by the court clerk one day after expiration of the 30-day filing period for taking an appeal under Rule 4(a)(1) of the Federal Rules of Appellate Procedure.

The U.S. Supreme Court examined the relevant court rules and concluded that they were not dispositive of the question when "filing" has occurred. The Court held that for *pro se* prisoners a notice of appeal is deemed filed the moment it is delivered to prison authorities for forwarding. The exception created by the Court is known as the "prison mailbox rule."

B. The *Walker-Bey* Decision.

In *Walker-Bey v. Dep't of Corrections,* 222 Mich. App. 605, 564 N.W.2d 171 (1997), the Michigan Court of Appeals was asked to adopt the *Houston* "prison mailbox rule." M.C.L. § 791.255(2), M.S.A. § 28.2320(55)(2), provides that a prisoner aggrieved by a final decision of the Department of Corrections must file an application for direct review in the circuit court. Such application must be filed with the court within 60 days after the decision. M.C.R. 2.107(G) provides that filing of pleadings and other papers must be with the court clerk.

In the *Walker-Bey* case, the prisoner presented his petition for review to prison authorities for mailing to the circuit court within the applicable 60 days, but the petition was not filed with the court within that time period. The Court of Appeals declined to adopt the "prison mailbox rule," stating that "[i]n the absence of ambiguity in the court rules and statute, we are precluded from adopting a 'prison mailbox rule.' . . . If a statute is clear, it is inappropriate for us to speculate regarding the probable intent of the Legislature." 222 Mich. App. at 609-10. Because the statute and court rules unambiguously require that the petition for review be filed with the court clerk within the 60-day period, "[t]he decision to adopt the prison mailbox rule belongs to the Legislature and to the Supreme Court which, if they see fit, are empowered to rewrite the statute and the court rules, respectively." *Id.* at 610.

C. Discussion.

In the context of filing court documents in a timely manner, *pro se*

prisoners are at a disadvantage vis-a-vis prisoners with legal representation. *Pro se* prisoners must rely on prison authorities to handle their mail in an expeditious manner. If prison authorities are a day late, that delay inures to the detriment of the prisoner who has no legal recourse.

As the concurring opinion in *Walker-Bey* points out, if a "prison mailbox rule" is to be adopted in Michigan, it could be done by the Legislature by amending M.C.L. § 791.255(2), M.S.A. § 28.2320(55)(2), or by the Supreme Court either by amending the current court rules or by interpreting the existing court rules to provide for a prison mailbox exception.

Question Presented

Should the Legislature amend M.C.L. § 791.255(2), M.S.A. § 28.2320(55)(2), to create a prison mailbox rule for *pro se* prisoners?

Recommendation

The Michigan Law Revision Commission recommends that the Legislature amend M.C.L. § 791.255(2), M.S.A. § 28.2320(55)(2), to create a prison mailbox rule for *pro se* prisoners.

III. Paralegal Expenses As Taxable Costs in Civil Litigation.

A. Background.

M.C.L. § 600.2405, M.S.A. § 27A.2405 provides that the following six items may be taxed and awarded as costs in civil litigation: (1) witness fees, (2) matters made taxable elsewhere in the statutes or court rules, (3) the legal fees for any newspaper publication required by law, (4) the reasonable expenses of printing briefs filed with the Supreme Court, (5) the reasonable costs of any bond required by law, and (6) any attorney fees authorized by statute or court rule. Paralegal costs are not expressly mentioned as an item of recoverable costs.

Similarly, M.C.R. 2.403(O)(6), dealing with recoverable costs in

connection with a rejected mediation evaluation, does not list paralegal costs as an item of recoverable costs either.

B. The *Joerger* Decision.

In *Joerger v. Gordon Food Service, Inc.*, 224 Mich. App. 167, 568 N.W.2d 365 (1997), the circuit court included in its award of mediation sanctions the costs of paralegal services. The Court of Appeals reversed this part of the sanction, concluding that no Michigan statute or court rule provides for an award of such costs. The Court encouraged the Legislature to amend the statute or the Supreme Court to amend the court rule to include paralegal expenses as an item of recoverable costs in civil litigation.

C. Discussion.

Several states permit an award of paralegal or legal assistant expenses, either pursuant to court rule, statute, or case law.[1] *See* Annot., *Attorneys' Fees: Costs of Services Provided by Paralegals or the Like as Compensable Element of Award in State Court,* 73 A.L.R.4TH 938, § 3. The Court of Appeals in *Joerger* found that the growing practice of allowing an independent recovery of paralegal time has merit, especially when a paralegal performs work that has traditionally been done by a lawyer. When recovery of such expenses is otherwise authorized, to qualify for such recovery, the following factors have been used in making the award: (1) the paralegal must be qualified by education, training, or work experience to perform substantive legal work; (2) the substantive legal work was performed under an attorney's direction and supervision; (3) the nature of the legal work performed; (4) the hourly rate charged by the paralegal; and (5) the number of hours expended by the paralegal.

Question Presented

Should the Legislature amend M.C.L. § 600.2405, M.S.A. § 27A.2405 to include paralegal expenses as an

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[1] Alaska, Arizona, California, the District of Columbia, Florida, Illinois, Indiana, Massachusetts, Minnesota, Missouri, Montana, North Carolina, Oregon, Texas, and Wisconsin.

item of recoverable costs in civil litigation?

Recommendation

The Commission recommends that the Legislature amend M.C.L. § 600.2405, M.S.A. § 27A.2405 to include paralegal expenses as an item of recoverable costs in civil litigation.

UNIFORM STATE LAWS RECENTLY APPROVED AND RECOMMENDED FOR ENACTMENT BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS: RECOMMENDATION TO THE LEGISLATURE

In 1996 and 1997, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all the States the following Uniform Acts:

- Uniform Interstate Family Support Act (1996)

- Limited Liability Partnership Act Amendments to the Uniform Partnership Act (1997)

- Uniform Unincorporated Nonprofit Association Act (1996) (attached)

In 1996, the Uniform Law Commissioners also approved a Model Punitive Damages Act (attached).

The Legislature has taken action with respect to the Uniform Interstate Family Support Act and the Limited Liability Partnership Act.

UNIFORM INTERSTATE FAMILY SUPPORT ACT

The Legislature enacted the Uniform Interstate Family Support Act (UIFSA) in 1996. P.A. 310, effective June 1, 1997, *codified at* M.C.L. §§ 552.1101-.1901. The UIFSA replaces the Uniform Reciprocal Enforcement of Support Act (URESA) and the revised URESA. It creates procedures that are intended to facilitate interstate child support enforcement.

The likelihood of universal acceptance of the UIFSA is virtually certain. As part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress mandated enactment of the UIFSA in order for a State to remain eligible for federal funding of child support enforcement. P.L. No. 104-193, § 321, 110 Stat. 2221, *codified at* 42 U.S.C. § 666(f).

The National Commission on Uniform State Laws recently approved amendments to the UIFSA. The Legislature should consider adopting those amendments.

LIMITED LIABILITY PARTNERSHIP ACT AMENDMENTS TO THE UNIFORM PARTNERSHIP ACT

The Uniform Law Commissioners amended the Uniform Partnership Act (UPA) to provide for the creation of an entity known as a "limited liability partnership" (LLP), a hybrid of the partnership and corporation form of business. Uniform Partnership Act (1994), §§ 1001-1003. The LLP combines the personal liability protection found in corporations with the operational flexibility and tax treatment granted to general partnerships. Except for the tax obligations of the partnership and partnership debts, a partner of a registered LLP is not personally liable for the tortious acts or omissions of other partners committed in the course of LLP business. *See* Kenneth J. Kutchey, Richard P. Martel & Clark C. Johnson, *New IRS Regulations May Diminish Use of Limited Liability Companies Formed Under the Michigan Statute*, MICH. BAR J. 340 (March 1997).

Pursuant to P.A. 323 of 1994, the Legislature amended Michigan's version of the Uniform Partnership Act to add provisions authorizing the creation of LLPs. M.C.L. §§ 449.44-.48. The 1994 legislation enacts in all material respects the LLP amendments to the UPA.

UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

At common law an unincorporated association, whether nonprofit or for-profit, was not a separate legal entity. It was an aggregate of individuals. Some large nonprofit organizations are or until recently were unincorporated (the National Conference of Commissioners on Uniform State Laws, the Association of American Law Schools from 1900-1972, and the American Bar Association from 1878-1992).

In many ways an unincorporated association has the characteristics of a business partnership. This approach creates problems. As explained by the National Commissioners on Uniform State Laws:

> A gift of property to an unincorporated association failed because no legal entity existed to receive it. For example, a gift of Blackacre to Somerset Social Club (an unincorporated nonprofit association) would fail because in law there is no legal entity to receive title. Some courts in time became uncomfortable with this result. Some construed such a gift as a grant to the officers of the association to hold the real estate in trust and manage it for the benefit of the members of the association. Later, some legislatures provided various solutions, including treating the

association for these purposes as an entity.[1]

As the Prefatory Note to the Uniform Act further explains, unincorporated associations, not being legal entities, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be. Courts borrowed from the law of partnership the concept that the members of the association, like partners, were co-principals. As co-principals they were individually liable. Again courts and legislatures, responding to concerns of their constituents about this result, modified these rules. Courts found that, in large membership associations, some members did not have the kind of control or participation in the decision process that made it reasonable and fair to view them as co-principals. Legislatures also took steps. Perhaps the most striking are the statutes adopted in many States in the last decade excusing officers, directors, members, and volunteers of nonprofit organizations from liability for simple negligence. *See, e.g.,* M.C.L. § 450.2209, M.S.A. § 21.197(209).

A nonprofit organization may take at least three forms: a charitable trust, corporation, or unincorporated association. A nonprofit organization, such as a church, could be two entities — a charitable trust with respect to a building and its use and a nonprofit corporation with respect to its other activities. The unincorporated nonprofit association is now governed by a hodgepodge of common law and state statutes governing some of their legal aspects. No State appears to have addressed the issues in a comprehensive, integrated, and internally consistent manner. In 1982, the Legislature enacted comprehensive legislation on nonprofit corporations, *see* Nonprofit Corporation Act, P.A. 162, *codified at* M.C.L. §§ 450.2101 *et seq.*. The Legislature has not enacted comparable legislation for unincorporated nonprofit associations, but has created one special unincorporated nonprofit association, the Catastrophic Claims Association, as part of Michigan's no-fault law. *See* M.C.L. § 500.3104. The Association's membership consists of all motor vehicle liability insurers in the State. It indemnifies insurers for losses in excess of $250,000 per occurrence.

The Uniform Unincorporated Nonprofit Association Act (UUNAA) applies to all unincorporated nonprofit associations. The Act covers unincorporated philanthropic, educational, scientific, and literary clubs, unions, trade associations, political organizations, cooperatives, churches, hospitals, condominium associations, neighborhood associations, and all other unincorporated nonprofit associations. Their members may be individuals, corporations, other legal entities, or a mix.

The basic approach of UUNAA is that an unincorporated nonprofit association

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[1] Uniform Unincorporated Nonprofit Association Act (1996), Prefatory Note, at 1.

is a legal entity for the purposes that the Act addresses: owning, receiving, and transferring real and personal property; non-liability of members for the association's tortious acts or omissions; and capacity of the association to sue and be sued. It does not make these associations legal entities for all purposes.

The Act is designed to cover all unincorporated nonprofit associations. To the extent a jurisdiction decides to retain statutes dealing with specific kinds of nonprofit associations, the Act supplements existing legislation. Many States have statutes on special kinds of unincorporated nonprofit associations, such as churches, mutual benefit societies, social clubs, veteran's organizations, and Michigan's Catastrophic Claims Association.

RECOMMENDATION

The Michigan Law Revision Commission recommends that the Legislature adopt the Uniform Unincorporated Nonprofit Association Act.

THE MODEL PUNITIVE DAMAGES ACT

In 1994 the National Conference of Commissioners on Uniform State Laws established a Drafting Committee on the subject of punitive damages. The scope of the project was limited to one of developing a Model Act, as compared to a Uniform Act. Unlike a Uniform Act, whose principal objective is to obtain immediate uniformity among the States on a particular legal subject, a Model Act may be more of an experimental effort to assist States in developing effective new approaches to a particular problem area of the law. A Model Act may contain more novel approaches, the efficacy of which can only be attained through some trial and error. Although uniformity may prove to be desirable at some point, it is not imperative in the short term. Consequently, the subject of punitive damages was thought to be appropriate for a Model Act.

The Model Punitive Damages Act by itself does not authorize awards of punitive damages in the enacting State. The Act applies only if punitive damages are awardable in the State by common law or other authority. In other words, the Act does not define the types of cases in which an award may be made. Other authority needs to be consulted to make that determination. In addition, the Act does not place any limit or "caps" on punitive awards that do not already exist in the enacting State. The Drafting Committee felt that it could improve upon the procedure, burden of

proof, judicial review, and similar matters so that arbitrary monetary limitations may not be necessary. However, if a State currently has a monetary limit or desires to adopt one, there is nothing in the Model Act that would conflict with such a limiting provision.

The Model Act distinguishes between two types of damages, compensatory and punitive. The term "compensatory damages" is defined as "an award of money, including a nominal amount, made to compensate a claimant for a legally recognized injury. The term does not include punitive damages." The term "punitive damages" means "an award of money made to a claimant solely to punish or deter." Section 1, Model Punitive Damages Act.

In the main, the Act attempts to define more precisely when a punitive award may be made by the trier of fact in terms of the standards for culpability and the manner in which the amount of such an award is to be determined. In keeping with these goals, the Act employs measures to facilitate judicial review of punitive awards by juries, and does so in a way to satisfy due process requirements under the Fourteenth Amendment to the United States Constitution. More specifically, the Act provides for the following:

- Allows the trier of fact to award punitive damages only if there is clear and convincing evidence that the defendant maliciously intended to cause the injury or exhibited a conscious and flagrant disregard of others in causing the injury (Section 5(a)(2));

- Identifies nine factors to be considered in determining a punitive award, such as the defendant's financial condition and any adverse effect of the award on innocent persons (Section 7);

- Requires a party seeking appellate review of a punitive damages award to first request review by the trial court (Section 9); and

- Requires a court, upon request, to hold separate trials on punitive damages if evidence, such as the financial condition of a party, would be admissible only to assess the amount of the punitive award (Section 11).

In Michigan's case, the Model Punitive Damages Act may be a solution in search of a

problem. At common law, punitive damages are not recoverable in Michigan, although exemplary damages may be awarded. While exemplary damages may be recovered in the proper case, Michigan law prohibits an award of punitive damages. *See, e.g., Kewin v. Mass. Mutual Life Ins. Co.*, 409 Mich. 401, 420-21, 295 N.W.2d 50 (1980); *Fellows v. Superior Products Co.*, 201 Mich. App. 155, 506 N.W.2d 534 (1993).

What is the difference between punitive and exemplary damages? Punitive damages are awarded solely to punish or make an example of a defendant because of the maliciousness or recklessness with which he acted. Exemplary damages, on the other hand, are awarded to compensate the plaintiff for injuries to feelings and for the sense of humiliation and indignity because of injury maliciously and wantonly inflicted. The purpose of exemplary damages is not to punish the defendant, but to make the plaintiff whole. *Veselenak v. Smith*, 414 Mich. 567, 573, 327 N.W.2d 261 (1982).

In the bifurcated damages scheme of the Model Punitive Damages Act, exemplary damages fall under the category of compensatory damages, thus taking exemplary damages outside the scope of the Act.

Michigan does have a handful of statutes[2] and court rules that provide for an award of "punitive" damages:

- Punitive damages in an amount of $500 is awardable under the Michigan Freedom of Information Act if a public body arbitrarily and capriciously refuses, or delays in complying with, a valid FOIA request. M.C.L. § 15.240(7), M.S.A. § 4.1801(10)(7).

- Punitive damages are recoverable in a consumer fraud action against a person who delivers less than the quantity of meat stated, or substitutes meat cuts or products for any of the parts purchased by the consumer. M.C.L. § 289.274.

- Punitive damages of $1,000 are recoverable from an insurer that fails to pay judgment under the Michigan dram shop

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[2] Prior to its repeal, punitive damages were awardable in a malicious prosecution action equal to the award of compensatory damages, trebled. M.C.L. § 600.2907, M.S.A. § 27A.2907.

act. M.C.L. §§ 436.22, 436.22e.

- Punitive *and* exemplary damages are recoverable in a libel action. M.C.L. § 600.2911(2)(b). *But see Postill v. Booth Newspapers, Inc.*, 118 Mich. App. 608, 325 N.W.2d 511 (1982)(an award of punitive damages under the libel statute is compensatory in nature).

- In an action against a merchant or library for false arrest, battery, slander, or false imprisonment arising out of a suspected shoplifting incident, punitive *and* exemplary damages are recoverable if it is shown that the library or merchant used unreasonable force, detained the plaintiff an unreasonable period of time, or acted with unreasonable disregard of the plaintiff's rights or sensibilities. M.C.L. § 600.2917(1).

- Punitive damages are recoverable for unlawful eavesdropping. M.C.L. § 750.539h(c).

- M.C.R. 7.101(P), M.C.R. 7.216(C), and M.C.R. 7.316(D) authorize the circuit court, the Court of Appeals, and the Supreme Court, respectively, to assess actual and punitive damages for vexatious or meritless appeals, or appeals taken for the purpose of hindrance or delay. Actual damages are the damages caused by the meritless appeal. Punitive damages are capped at the amount of actual damages.

Other than capping an award of punitive damages in the specific instances noted, none of these statutes or court rules sets out procedures for making an award of punitive damages.

RECOMMENDATION

The Commission makes no recommendation with respect to the Model Punitive Damages Act.

THE MICHIGAN BORROWING STATUTE: A REPORT TO THE MICHIGAN LAW REVISION COMMISSION AND RECOMMENDATION TO THE LEGISLATURE

INTRODUCTION.

As part of its statutory charge to examine the statutes of the state for the purpose of discovering defects and anachronisms in the law and to recommend needed reform, the Michigan Law Revision Commission undertook a review of M.C.L. § 600.5861; M.S.A. § 27A.5861, Michigan's so-called "borrowing statute." That statute provides in pertinent part:

> An action based upon a cause of action accruing without this state shall not be commenced after the expiration of the statute of limitations of either this state or the place without this state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of this state the statute of limitations of this state shall apply.

This type of statute, enacted in more than half the states, applies or "borrows" the shorter of either the statute of limitations of the state where the cause of action accrued or of Michigan. First enacted in 1961 and substantially rewritten in 1978, the purpose of the Michigan borrowing statute, and of all borrowing statutes, is to prevent forum shopping by out-of-state plaintiffs who attempt to bring an otherwise time-barred claim in a Michigan court where the applicable limitations period has not yet run.

The Michigan borrowing statute was enacted at a time, and in a legal context, when the governing choice-of-law rule in Michigan, and in most states, was *lex loci delicti* for torts (*i.e.*, the law of the place of injury), and *lex loci contractus* for contracts (*i.e.*, the law of the place of contracting). Today, fewer than a dozen states still use the *lex loci* rules in tort or contract choice-of-law determinations. As explained more fully in Part II of this Report, the legal context in which the borrowing statute was enacted no longer exists in Michigan, which has abandoned the *lex loci* rules for tort and contract conflicts. Instead, Michigan courts follow a *lex fori* rule in tort actions (*i.e.*, apply forum law, unless some other state has a greater interest than Michigan in having its

law applied), and the most significant relationship test of the Restatement (Second) of Conflict of Laws in contract cases. To use a time-worn metaphor, the Michigan borrowing statute is a round peg that no longer fits well in the square hole of Michigan's current choice-of-law rules.

The balance of this Report is divided into three Parts. Part I briefly describes the body of law known as conflicts of laws or choice of law, which is the way in which courts resolve the issue of which jurisdiction's law to apply in a multi-state setting. Part II discusses Michigan's borrowing statute against the backdrop of the choice-of-law rules currently used by Michigan courts to resolve conflicts problems in the areas of tort and contract. Part III is a section-by-section analysis of the Uniform Conflict of Laws-Limitations Act (UCLLA).

I. AN OVERVIEW OF CHOICE-OF-LAW RULES AND METHODOLOGIES.

This Part of the Report is divided into two sections. The first section provides an overview of the body of rules known in the United States as conflict of laws or, more specifically, choice of law. The second section examines the choice-of-law rules in Michigan that apply in tort and contract cases.

A. A Thumbnail Sketch of Choice-of-Law Rules in the United States.

It is not possible to give more than a brief overview of the subject of choice of law in the limited space allotted in this Report. Suffice it to say that an entire law school course is devoted to the subject, and several treatises have been written on it as well.[1]

The body of law known as conflict of laws or choice of law is a set of rules, largely judge-made, on how to answer a legal problem when the elements of the problem have contacts with more than one state or jurisdiction. In a world in which interstate and international transactions are an everyday

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[1] *See generally* LEA BRILMAYER, CONFLICT OF LAWS (1995); WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, UNDERSTANDING CONFLICT OF LAWS (1995); EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS (1992). Professor William Prosser once described the subject as "a dismal swamp."

occurrence, lawyers, courts, and legislatures ignore the subject at their peril. The most important question that arises in a conflict-of-laws setting is, what law will be applied to resolve the dispute?

Take the following example. A group of Michigan residents contract for a vacation bus tour of Toronto, Ontario. In their home city of Lansing, they board a Lansing Lines bus to Detroit. Lansing Lines is a Michigan corporation. In Detroit, they transfer to a bus owned by Toronto Tours Co., an Ontario corporation. While traveling in Ontario, the bus is hit by a freight train at a railroad crossing, killing or seriously injuring all of the passengers. What law will be applied to resolve this dispute? Under Ontario law, assume that the average recovery per passenger would be substantially lower than the recovery under Michigan law due to differences between Ontario and Michigan law on tort recovery. If plaintiffs sue in Michigan, will a Michigan court apply Michigan law on tort recovery or Ontario law on this issue? This is the question that the body of law known as conflict of laws (sometimes referred to as choice of law) is designed to answer.

Choice-of-law rules are overwhelmingly state-level, judge-made rules. In rare instances state legislatures (most notably, Louisiana's[2]) have enacted choice-of-law rules. Federal courts have also adopted choice-of-law rules for cases in which federal law provides the rule of decision.

Choice-of-law rules can be categorized into two legal camps: traditional and modern. The traditional choice-of-law rules are the *lex loci* ("law of the place") rules. Until the early 1960s, choice-of-law rules were largely uniform in the United States: All states used the territorial *lex loci* rules of the First Restatement of Conflict of Laws, which focused on a single connecting factor within the territory of a state as determinative as to which states' law to apply in a multi-state contact setting. In the case of torts, for example, that choice-of-law rule was the monolithic *lex loci delicti* rule ("the law of the place of wrong"), that is, all substantive questions relating to the existence of a tort claim are governed by the local law of the place of wrong. That place is "the state where the last event necessary to make an actor liable for an alleged tort takes

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[2] On January 1, 1992, a new comprehensive conflict-of-laws code took effect in Louisiana. *See* La. Civ. Code arts. 3515-3549.

place,"[3] *i.e.*, the place where the cause of action accrued. The state where the last event takes place, in turn, is the state where the injury occurred. Today, twelve states still follow the *lex loci delicti* rule: Alabama, Georgia, Kansas, Maryland, Montana, New Mexico, North Carolina, South Carolina, Vermont, Virginia, West Virginia, and Wyoming.[4]

In the case of lawsuits involving contracts, the traditional choice-of-law rule is the *lex loci contractus* rule ("the law of the place of contracting"). The *lex loci contractus* rule is subdivided into issues of contract validity and contract construction and performance. If the issue turns on whether the parties have entered into a binding contract, that issue is resolved under the law of the state where the contract was made, which would be the place of acceptance of the offer. If the issue is one of performance, the law of the place of performance governs, in the absence of a valid choice-of-law clause in the parties' agreement. Today, ten states still follow the *lex loci contractus* rule: Alabama, Florida, Georgia, Kansas, Maryland, New Mexico, Rhode Island, South Carolina, Tennessee, and Virginia.[5]

Criticism of the First Restatement and of the territorial *lex loci* rules grew during the 1960s. The most influential critic was Professor Brainerd Currie, who proposed a choice-of-law methodology known as governmental interest analysis. In a nutshell, his approach calls for a three-step analysis. First, the forum must identify the significant contacts that the case presents and match them with the state in which they occurred. Such contacts would include, for example, the domicile of the parties and the place of the wrong in tort cases. Second, the forum must see if the contact states' laws are materially different on the specific issue. For example, assume State A has a damages cap law on noneconomic damages, and State B provides for unlimited tort recovery. In that situation, there is a conflict. Third, the forum must identify the policy or governmental interest behind each states' law and apply the law of the interested

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[3] RESTATEMENT OF CONFLICT OF LAWS § 377.

[4] *See* Symeon C. Symeonides, *Choice of Law in the American Courts in 1995: A Year in Review,* 44 AM. J. COMP. L. 181 (1996)[hereinafter Symeonides].

[5] *See* Symeonides, *supra* note 4, at 195.

state. For example, assume State A's policy for having a damages cap law is to protect defendants (and their insurers) from economic ruin. Since both parties are domiciled in State B with its unlimited recovery, the only interested state is State B, the state where the loss will be felt. Thus, in sharp contrast to the *lex loci* rule, which would call for application of the law of State A (the place where the accident occurred) interest analysis would apply the law of State B, the law of the common domicile.

Other academics joined the chorus of criticism aimed at the First Restatement in short order. These scholarly camps all advanced a content-selecting system that focuses on the policy behind the competing legal rules, in contrast to the First Restatement's jurisdiction-selecting choice-of-law rules.

The critics were successful in winning judicial converts in the 1960s, with the New York Court of Appeals in 1963[6] and the California Supreme Court in 1967 adopting the interest-analysis approach to resolving choice-of-law issues.[7] Both courts broke ranks with the First Restatement and adopted the modern interest analysis methodology for choice-of-law determinations.

The First Restatement, the various scholarly camps, and the early court decisions departing from the *lex loci* rules were synthesized in 1971 into the Second Restatement of Conflicts. The Second Restatement blends these different choice-of-law approaches into a choice-of-law methodology known as the "most significant relationship" (MSR) test which directs the forum to apply the law of the state with the most significant relationship to the particular issue. The Second Restatement's approach incorporates the First Restatement's jurisdiction-selecting rules by providing presumptively valid *lex loci* rules to resolve many issues. Those lex loci rules are to be applied, unless there is some other state with a more significant relationship to the issue, in which case the lex loci rule is displaced and MSR state's law is applied. To guide courts in

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[6] *See* Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963). A symposium on this case can be found at 63 COLUM. L. REV. 1212 (1963).

[7] *See* Reich v. Purcell, 67 Cal.2d 551, 63 Cal. Rptr. 31, 432 P.2d 727 (1967). A symposium devoted to this case can be found at 15 U.C.L.A.L. REV. 551 (1968).

making the MSR determination, § 6 of the Second Restatement sets forth seven considerations for making a choice-of-law selection:

> (1) the needs of the interstate and international systems,
> (2) the relevant policies of the forum,
> (3) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
> (4) the protection of justified expectations,
> (5) the basic policies underlying the particular field of law,
> (6) certainty, predictability and uniformity of result, and
> (7) ease in the administration and application of the law to be applied.

The MSR state is determined by examining a list of connecting factors (*e.g.*, the parties' domicile, place of the wrong, seat of the relationship) that are deemed significant in light of the foregoing seven § 6 factors.
The specific choice-of-law provisions of the Second Restatement are organized by subject matter: torts, contracts, property, trusts, status, business corporations, and administration of estates. The list of connecting factors varies with each subject matter.

In tort conflicts, 22 states follow the Restatement Second or a "significant contacts" approach,[8] and 28 states do likewise in contract conflicts.[9] The other states that no longer follow the traditional *lex loci* rules, but which at the same time have not adopted the Restatement Second's MSR approach, use variations

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[8] Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Maine, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Washington. *See* Symeonides, *supra* note 4.

[9] Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming. *See* Symeonides, *supra* note 4.

on the interest analysis choice-of-law approach.[10]

B. Choice-of-Law Rules in Michigan.

Michigan joined the modern choice-of-law revolution in tort conflicts in 1987,[11] and in contract conflicts in 1995. In tort conflicts, the leading Supreme Court opinion is *Olmstead v. Anderson.*[12] In *Olmstead*, a Michigan defendant was involved in a fatal car crash in Wisconsin that killed two Minnesota residents. At the time of the accident, Wisconsin, the place of the wrong, had a damages cap of $25,000 for wrongful death, whereas neither Michigan nor Minnesota limited recovery for wrongful death. After surveying the developments in the choice-of-law field in Michigan and in other states, and concluding that there no longer was any sound justification for the *lex loci delicti* rule, the Court adopted a *lex fori* ("forum law") rule to resolve tort conflicts.[13] Under the *lex fori* rule, the law of the forum provides the applicable rule of decision and will only be displaced if it can be shown that some other

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[10] The states that use neither *lex loci* nor the MSR approach in tort conflicts are California, New Jersey, and the District of Columbia, that use interest analysis; Kentucky, Michigan, and Nevada, which use *lex fori*; Arkansas, Minnesota, New Hampshire, Rhode Island, and Wisconsin, that use Professor Leflar's so-called "better rule of law" approach; and Hawaii, Louisiana, Massachusetts, New York, Oregon, and Pennsylvania, that use a combination of the modern choice-of-law approaches. *See* Symeonides, *supra* note 4.

In contract conflicts, Minnesota and Wisconsin use Leflar's better-rule-of-law approach; and California, the District of Columbia, Hawaii, Louisiana, Massachusetts, New Jersey, New York, North Dakota, Oregon, and Pennsylvania use a combination of the modern approaches. *See* Symeonides, *supra* note 4.

[11] Michigan's break from the *lex loci delicti* rule in tort cases arguably can be traced back to 1982 in *Sexton v. Ryder Truck Rental, Inc.*, 413 Mich. 406, 320 N.W.2d 843, although that decision did not have a majority opinion.

[12] 428 Mich. 1, 400 N.W.2d 292 (1987).

[13] Two other states, Kentucky and Nevada, also use *lex fori* in tort conflicts. *See* Motenko v. MGM Dist., Inc., 921 P.2d 933 (Nev. 1996); Foster v. Leggett, 484 S.W.2d 827 (Ky. App. 1972).

state has a greater interest than the forum in having its law applied.

In *Olmstead*, the Court found that damage cap laws are concerned with compensation and the protection of defendants from exorbitant damage awards, not with conduct. Consequently, the state of the place of the wrong -- Wisconsin -- had little or no interest in such compensation and protection when none of the parties resided there.[14] The Court concluded that because neither of the parties was from Wisconsin; because the law in conflict dealt with loss allocation, not conduct regulation (the latter being Wisconsin's only legitimate interest under the circumstances); and because there was no conflict in the law of Michigan and Minnesota, forum law (Michigan law) would be applied.[15] Had the Supreme Court followed the traditional choice-of-law rule, *lex loci delicti,* Wisconsin law would have applied.

In contract conflicts, the Michigan Supreme Court adopted the Second Restatement's MSR approach in 1995 in *Chrysler Corp. V. Skyline Industrial Services, Inc.*[16] The Supreme Court in *Skyline* recognized that "[t]he trend in this Court has been to move away from traditional choice-of-law conceptions toward

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[14] Olmstead, 428 Mich. at 28.

[15] *Id.* at 29-30. A recent wrongful death case where the court applied the Michigan owners' liability statute rather than Alabama's guest passenger statute is *Burney v. PV Holding Corp.*, 218 Mich. App. 167, 553 N.W.2d 657 (1996). Applying *Olmstead*, the Court of Appeals concluded that Michigan's interest was greater than Alabama's, even though Alabama was the place of the accident and the plaintiff's domicile at the time of death.

[16] 448 Mich. 113, 528 N.W.2d 698 (1995). In a 1982 decision, *Hardy v. Monsanto Enviro-Chem Systems, Inc.*, 414 Mich. 29, 86 n.60, 323 N.W.2d 270, the Court had cited section 187 of the Second Restatement in upholding the parties' contractual choice-of-law clause, but did not squarely adopt the Restatement. The citation to the Second Restatement was inconsequential to the outcome and the methodology. Lower Michigan courts after *Hardy* continued to apply *lex loci contractus*. See cases cited in Symeon Symeonides, *Choice of Law in the American Courts in 1993 (and in the Six Previous Years),* 42 AM. J. COMP. L. 599, 603 n.30 (1994).

a more policy-centered approach,"[17] noting that the national trend has been to adopt the Second Restatement. "[R]esolving conflicts questions requires moving beyond traditional rules,"[18] the Court stated, adding:

> Much as lex loci delicti had proven too inflexible for resolution of tort conflicts, the rigid "law of the place of contracting" approach has become outmoded in resolving contract conflicts. Rather, §§ 187 and 188 of the Second Restatement, with their emphasis on examining the relevant contacts and policies of the interested states, provide a sound basis for moving beyond formalism to an approach more in line with modern-day contracting realities.[19]

In the end, the Court upheld the parties' contractual choice-of-law clause that made express reference to Michigan law governing the contractual relationship, including the validity of an indemnification claim that was unenforceable under Illinois law, Illinois being the other interested state.

II. CHOOSING THE APPLICABLE STATUTE OF LIMITATIONS.

This Part of the Report is divided into two sections. The first section is an overview of how courts choose the applicable statute of limitations in a multi-state contact case. The second section addresses the fit of Michigan's modern choice-of-law rules with the Michigan borrowing statute.

A. Limitation Periods and Choice of Law.

In addition to the tort recovery issue presented in the choice-of-law hypothetical in Part I.A, a threshold issue that sometimes must be resolved in interstate legal problems concerns the applicable statute of limitations. Will the forum-state's limitations period invariably apply, or will the limitations period of the other jurisdiction govern?

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[17] Skyline, 448 Mich. at 122-23, 528 N.W.2d at 702.

[18] *Id.* at 123, 528 N.W.2d at 703.

[19] *Id.*

When the forum's choice-of-law rule refers to the law of another jurisdiction, the question becomes just how much of the other jurisdiction's law is applied? To answer this question under the traditional conflict-of-laws approach, laws were generally divided into substance and procedure. In resolving a procedural issue (*e.g.*, those dealing with the process of litigation), a court applied the forum's own rules. Substantive issues (*e.g.*, those involving the claim of right) were determined by the law of the other jurisdiction.[20]

The next question is, in the substance/procedure dichotomy, into which category do statutes of limitations fall? Traditional conflicts law characterized statutes of limitations as procedural under at least two rationales. The first is that it is "the purpose of a statute of limitations . . . to protect both the parties and the local courts against the prosecution of stale claims."[21] The second rationale is that limitations periods affect the remedy, not the underlying right, and it is the forum that dispenses remedies under its own brand of remedial justice.

Before its 1988 revision, § 142 of the Restatement (Second) Conflict of Laws held tenaciously to the characterization of statutes of limitations as procedural. A procedural characterization is, of course, constitutional. In the U.S. Supreme Court's 1988 decision, *Sun Oil Co. v. Wortman*,[22] the Court held that since statutes of limitations are by tradition procedural, the forum does not violate either the due process or full faith and credit clauses when it applies its own longer statute of limitations to permit an otherwise stale claim to be litigated that is otherwise governed by the substantive law of a sister state.

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[20] *See generally* WILLIAM M. RICHMAN & WILLIAM L. REYNOLDS, UNDERSTANDING CONFLICT OF LAWS § 57 (1995); EUGENE F. SCOLES & PETER HAY, CONFLICT OF LAWS § 3.8 (1992).

[21] RESTATEMENT (SECOND) CONFLICTS OF LAWS § 142 cmt. (d). For a detailed analysis of statutes of limitations in the choice-of-law context, *see* Margaret Rosso Grossman, *Statutes of Limitations and the Conflict of Laws: A Modern Analysis*, 1980 ARIZ. ST. L.J. 1.

[22] 486 U.S. 717 (1988).

Because the traditional characterization of statutes of limitations as procedural may encourage forum-shopping in cases where the forum has a longer statute of limitations that has not yet run, two escape devices were developed to cut off forum shopping by plaintiffs.[23]

The first escape device is judge-made. The judge-made exception to the procedural characterization of statutes of limitations treats them as substantive when the sister-state limitation is intended to extinguish the right and not only to bar the remedy. The courts that have adopted this escape device to prevent forum-shopping have restricted its use to statutory rights that have a "built in" limitations period, although the presence of a limitations period within the statute itself is not conclusive on the substantive nature of the limitation.[24] Typical examples are limitations periods contained in wrongful death statutes.

An alternative formulation of this judge-made escape device is the specificity test. The limitations period is treated as substantive when it is "directed to the newly created liability so specifically as to warrant saying that it qualified the right."[25] Unlike the built-in test, which requires that the statute of limitations be an integral part of the statute creating the right, the specificity test is broader in that the limitations period qualifying the right may be found outside the statute creating it.

This judge-made escape device is unpredictable because of the vagueness of the built-in test. It also is limited to situations where the plaintiff's claim is based on statute and not on common law.

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[23] Forum shopping for a longer statute of limitations is not just a theoretical possibility, but does in fact occur. *See, e.g.,* Ferens v. John Deere Co., 494 U.S. 516 (1990); Keeton v. Hustler Magazine, Inc., 549 A.2d 1187 (N.H. 1988).

[24] *See, e.g.*, Lillegraven v. Tengs, 375 P.2d 139 (Alaska 1962); Bournias v. Atlantic Maritime Co., 220 F.2d 152 (2d Cir. 1956).

[25] Davis v. Mills, 194 U.S. 451, 454 (1904).

The second escape device, adopted by more than half of the states,[26] has been the enactment of "borrowing" statutes which provide that a cause of action, regardless of whether it is based on statute or common law, is barred in the forum if it is also barred in the state where the claim accrued.[27] The typical borrowing statute provides that the cause of action will be barred in the forum if it is barred where it arose, accrued, or originated. Another typical feature of borrowing statutes, including Michigan's, is the exception in favor of forum resident-plaintiffs.[28]

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[26] *See, e.g.*, ALA. CODE § 6-2-17; ALASKA STAT. § 09-10.220; ARIZ. REV. STAT. ANN. § 12-506; DEL. CODE ANN. tit. 10, § 8121; FLA. STAT. ANN. § 95.10 (West); HAW. REV. STAT. ANN. tit. 36, § 657-9; ILL. STAT. ANN. ch. 83, ¶ 21 (Smith-Hurd); IND. CODE ANN. § 34-1-2-6(b) (West); IOWA CODE ANN. § 614.7; KAN. CIV. PROC. CODE ANN. § 60-516 (Vernon); KY. REV. STAT. ANN. § 413.320; MASS. GEN. LAWS ANN. ch. 260, § 9; MISS. CODE ANN. § 15-1-65; MO. ANN. STAT. § 516.190 (Vernon); NEB. REV. STAT. § 25-215; NEV. REV. STAT. § 11.020; N.Y. CIV. PRAC. L. & R. § 202 (McKinney); N.C. GEN. STAT. § 1-21; OKLA. STAT. ANN. tit. 12, §§ 104-108; 42 PA. CONS. STAT. ANN. § 5521; R.I. GEN. LAWS § 9-1-18; TENN. CODE ANN. § 28-1-112; UTAH CODE ANN. § 78-12-45; VA. CODE ANN. § 8.01-247; W. VA. CODE § 55-2-17; WIS. STAT. ANN. § 893.07; WYO. STAT. § 1-3-117. *See generally* Annotation, *Validity, Construction, and Application, in Nonstatutory Personal Injury Actions, of State Statute Providing for Borrowing of Statute of Limitations of Another State*, 41 A.L.R. 4TH 1025 (1985).

[27] The New Jersey Supreme Court judicially created the equivalent of a borrowing statute in *Heavner v. Uniroyal, Inc.*, 63 N.J. 130, 305 A.2d 412 (1973), where it held that a suit is barred in a New Jersey (1) court when the cause of action arises in another state; (2) the forum has no substantial interest in the matter; (3) the substantive law of the sister state is to be applied; and (4) that state's limitations period has expired at the time suit is commenced.

[28] The Michigan borrowing statute was amended in 1978 to make the special allowance for Michigan resident-plaintiffs. 1978 P.A. 542. This discriminatory exception in favor of resident plaintiffs was unsuccessfully challenged in the U.S. Supreme Court under the privileges and immunities clause of Article IV, § 2 of the U.S. Constitution. *See* Canadian Northern R. Co. v. Eggen, 252 U.S. 553 (1920).

In sum, a sister-state or foreign limitations period is borrowed only if the claim would be barred in the sister state. If the claim is time-barred in the forum, on the other hand, the borrowing statute will not be used. The effect is to apply the shorter of the sister-state or local limitations period.[29]

A third development has been the adoption by six states of the Uniform Conflict of Laws-Limitations Act, discussed below in Part III.

B. The Michigan Borrowing Statute in the Modern Choice-of-Law Era.

The Michigan borrowing statute, with its reference to the place where the cause of action accrued, was drafted and enacted against the backdrop of the *lex loci* choice-of-law rules, a backdrop that no longer exists in Michigan.

Consistent with the principles of the First Restatement, most jurisdictions hold that the cause of action accrues in the jurisdiction where the last act to give rise to liability occurred.[30] Michigan is no exception.[31] With the advent of modern choice-of-law rules in Michigan, it seems desirable to reevaluate the reference to the place where the cause of action accrued in the borrowing statute to instead align the applicable limitations period with the applicable substantive law. If this is not done, the limitations period of a jurisdiction may be chosen which has no substantial relationship to or interest in the litigation, contrary to the current choice-of-law methodology now used in Michigan.

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[29] The constitutionality of the forum applying its shorter statute of limitations to bar a sister-state claim has been upheld by the U.S. Supreme Court. Wells v. Simonds Abrasive Co., 345 U.S. 514 (1953).

[30] *See, e.g.,* Colhoun v. Greyhound Lines, Inc., 265 So.2d 18 (Fla. 1972); Boudreau v. Baughman, 322 N.C. 331, 368 S.E.2d 849 (1988).

[31] *See* Waldron v. Armstrong Rubber Co., 54 Mich. App. 154, 220 N.W.2d 738, *rev'd on other grounds*, 393 Mich. 760, 223 N.W.2d 295 (1974); Makarow v. Volkswagen of America, Inc., 157 Mich. App. 401, 403 N.W.2d 563 (1987); Bechtol v. Mayes, 198 Mich. App. 691, 499 N.W.2d 439 (1993); Hover v. Chrysler Corp., 209 Mich. App. 314, 530 N.W.2d 96 (1994).

An illustration of the incongruity that could occur is based on the facts of *Olmstead v. Anderson.* Even though the Supreme Court concluded that Wisconsin, the place of the accident, had no interest in having its damages cap law applied, under the Michigan borrowing statute the cause of action accrued in Wisconsin, *i.e.*, Wisconsin was the place where the last act necessary to give rise to liability occurred. If Wisconsin had had a limitations period that would have barred the plaintiffs' claim, the action would have been dismissed as time barred under judicial construction of the Michigan borrowing statute, even though Wisconsin was a disinterested state whose law did not otherwise apply to the case.[32]

The courts of at least one state, Florida, have construed the language of its borrowing statute to make it fit into that state's current choice-of-law methodology.[33] Most states, however, continue to interpret their borrowing statues literally, even when the forum state has abandoned the traditional *lex loci* choice-of-law approach in other respects.[34]

In order to make the Michigan borrowing statute consistent with Michigan's current choice-of-law approach, it will be left to the courts to perform judicial cosmetic surgery on the borrowing statute by torturing the language of the statute (a course most Michigan judges will not take in the face of clear and unambiguous statutory language). Alternatively, the Legislature could amend the borrowing statute to bring it into line with Michigan's current choice-of-law regime. If the borrowing statute were amended, the Uniform Conflict of Laws-Limitation Act is one legislative model.

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[32] For examples of this incongruity, *see* Vick v. Cochran, 316 So.2d 242 (Miss. 1975); Trzecki v. Gruenewald, 532 S.W.2d 209 (Mo. 1976).

[33] *See, e.g.*, Bates v. Cook, Inc., 509 So. 2d 1112 (Fla. 1987), where the court held that where a cause of action "arose" under the Florida borrowing statute was determined by the same "significant relationship" test used to choose law in tort actions.

[34] *See, e.g.*, Safecard Services, Inc. V. Halmos, 912 P.2d 1132 (Wyo. 1996); Benne v. Int'l Bus. Machines Corp., 87 F.3d 419 (10th Cir. 1996)(applying New York choice of law).

III. THE UNIFORM CONFLICT OF LAWS-LIMITATIONS ACT.

In response to the choice-of-law revolution that swept the United States in the 1970s, the Uniform Conflict of Laws-Limitations Act (UCLLA) was promulgated by the National Conference of Commissioners on Uniform State Laws in 1982 in part to replace borrowing statutes that had been enacted during the *lex loci* era of choice of law. The UCLLA characterizes statute of limitations as substantive for choice-of-law purposes, thereby pairing the law of the state that governs questions of liability and recovery with that state's statute of limitations.

The Uniform Conflict of Laws-Limitation Act[35] provides that the applicable limitations period should be set by the state whose substantive law will be used to decide the case. The UCLLA thus answers the limitations-period question in a predictable and certain way. Six states have adopted the UCLLA: Arkansas, Colorado, Montana, North Dakota, Oregon, and Washington.[36] Colorado and Washington had traditional borrowing statutes that they replaced with the UCLLA.[37]

The operative sections of the UCLLA are sections 2, 3, and 4. Section 2 provides:

> **§ 2. Conflict of Laws; Limitations Period.**
>
> (a) Except as provided by Section 4, if a claim is substantively based:

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[35] 12 U.L.A. 157 (1996). A copy of the Uniform Act is appended to this Report. *See* Robert A. Leflar, *The New Conflicts-Limitations Act*, 35 MERCER L. REV. 461 (1984).

[36] ARK. CODE ANN. §§ 16-56-201 to 16-56-210; COLO. REV. STAT. ANN. §§ 13-82-101 to 13-82-107; MONT. CODE ANN. §§ 27-2-501 to 27-2-507; N.D. CENT. CODE §§ 28-01.2-01 to 28-01.2-05; ORE. REV. STAT. §§ 12.410 to 12.480; WASH. REV. CODE ANN. §§ 4.18.010 to 4.18.904.

[37] *See* COLO. REV. STAT. ANN. § 13-80-118; WASH. REV. CODE ANN. § 4.16.290.

(1) upon the law of one other state, the limitation period of that state applies; or

(2) upon the law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this State applies.

(b) The limitation period of this State applies to all other claims.

Section 2, in short, treats limitation periods as substantive, to be governed by the limitations law of a state whose law governs other substantive issues in the claim, regardless of whether that limitation period is longer or shorter than the forum's limitation period.[38]

Section 3 provides:

§ 3. Rules Applicable to Computation of Limitation Period.

If the statute of limitations of another state applies to the assertion of a claim in this State, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitations period, but its statutes and other rules of law governing conflict of laws do not apply.

This section treats all tolling and accrual provisions as substantive parts of the limitations law of any state whose law may be held applicable. This is consistent with current Michigan judicial interpretations of the borrowing statute, which link a sister-state's limitations period with its tolling provisions.[39]

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[38] For cases construing the UCLLA, *see* Cropp v. Interstate Distributor Co., 129 Or. App. 510, 880 P.2d 464 (1994); Perkins v. Clark Equipment Co., 823 F.2d 207 (8th Cir. 1987)(federal court sitting in North Dakota applied Iowa limitation period to case governed by Iowa tort law).

[39] *See, e.g.*, Hover v. Chrysler Corp., 209 Mich. App. 314, 318-19, 530 N.W.2d 96, 98 (1994); Makarow v. Volkswagen of America, Inc., 157 Mich.

Finally, Section 4 of the UCLLA provides:

§ 4. Unfairness.

If the court determines that the limitation period of another state applicable under Sections 2 and 3 is substantially different from the limitation period of this State and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this State applies.

This section is an escape hatch to avoid harsh results. While the comment to this section cautions that it should only be used in "extreme cases," it would arguably be possible under this section for a Michigan court to continue the special exception for Michigan resident-plaintiffs found in the borrowing statute that permits application of Michigan's longer statute of limitations.

RECOMMENDATION

The Commission recommends that the Legislature repeal the Michigan borrowing statute, M.C.L. § 600.5861; M.S.A. § 27A.5861, and enact the Uniform Conflict of Laws-Limitations Act.

App. 401, 410, 403 N.W.2d 563, 567 (1987).

Prior Enactments Pursuant to Michigan Law Revision Commission Recommendations

The following Acts have been adopted to date pursuant to recommendations of the Commission and in some cases amendments thereto by the Legislature:

1967 Legislative Session

Subject	Commission Report	Act No.
Original Jurisdiction of Court of Appeals	1966, p. 43	65
Corporation Use of Assumed Names	1966, p. 36	138
Interstate and International Judicial Procedures	1966, p. 25	178
Stockholder Action Without Meetings	1966, p. 41	201
Powers of Appointment	1966, p. 11	224
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1969 Legislative Session

Subject	Commission Report	Act No.
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1970 Legislative Session

Subject	Commission Report	Act No.
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1971 Legislative Session

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1972 Legislative Session

Subject	Commission Report	Act No.
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1973 Legislative Session

Subject	Commission Report	Act No.
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1974 Legislative Session

Subject	Commission Report	Act No.
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1975 Legislative Session

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1976 Legislative Session

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1978 Legislative Session

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1980 Legislative Session

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1981 Legislative Session

Subject	Commission Report	Act No.
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1982 Legislative Session

Subject	Commission Report	Act No.
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1983 Legislative Session

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1984 Legislative Session

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1986 Legislative Session

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1987 Legislative Session

Subject	Commission Report	Act No.
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1988 Legislative Session

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1990 Legislative Session

Subject	Commission Report	Act No.
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1991 Legislative Session

Subject	Commission Report	Act No.
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1992 Legislative Session

Subject	Commission Report	Act No.
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1996 Legislative Session

Subject	Commission Report	Act No.
Felony Murder and Arson	1994, p. 179	20, 21

RICHARD D. McLELLAN

Mr. McLellan is Chairman of the Michigan Law Revision Commission, a position he has filled since 1986 following his appointment as a public member of the Commission in 1985.

Mr. McLellan is the head of the Government Policy and Practice Group of Dykema Gossett PLLC, a Michigan-based law firm. He is responsible for the firm's public policy, administrative law and lobbying practices in Lansing and Washington, D.C.

Mr. McLellan is a former Chairman of the Board of Directors of the Michigan Chamber of Commerce and President of the Library of Michigan Foundation. He is presently the President of the Michigan/Japan Foundation.

In 1990, Mr. McLellan was appointed by President George Bush as a Presidential Observer to the elections in the People's Republic of Bulgaria. The elections were the first free elections in the country following 45 years of Communist rule.

Following the 1990 elections, Mr. McLellan was named Transition Director to then Governor-elect John Engler. In that capacity, he assisted in the formation of Governor Engler's Administration.

By appointment of Governor John Engler, he is a member and secretary of the Michigan International Trade Authority, a member of the Michigan Jobs Commission, and a member of the Library of Michigan Board of Trustees.

In addition, Mr. McLellan formerly served as Chairman of the Michigan Corrections Commission. He is a member of the Board of Directors of the Detroit College of Law at Michigan State University, the Chief Okemos Council of the Boy Scouts of America, the Mackinac Center for Public Policy, the Oxford Foundation and the Cornerstone Foundation. He is a member of the Board of Governors of the Cranbrook Institute of Science.

He is a graduate of the Michigan State University Honors College and the University of Michigan Law School. He has served as an adjunct professor of international studies at Michigan State University.

Mr. McLellan is a member of the Board of Directors of the Mercantile & General Life Reassurance Company of America and a Trustee of JNL Trust established by the Jackson National Life Insurance Company. He is Chairman of the Michigan Competitive Telecommunications Providers Association.

ANTHONY DEREZINSKI

Mr. Derezinski is Vice Chairman of the Michigan Law Revision Commission, a position he has filled since May 1986 following his appointment as a public member of the Commission in January of that year.

Mr. Derezinski is Director of government relations and policy services for the Michigan Association of School Boards. He also is an adjunct professor of law at The University of Michigan Law School.

He is a graduate of Muskegon Catholic Central High School, Marquette University, the University of Michigan Law School (Juris Doctor degree), and Harvard Law School (Master of Laws degree). He is married and resides in Ann Arbor, Michigan.

Mr. Derezinski is a Democrat and served as State Senator from 1975 to 1978. He is a member of the Board of Regents of Eastern Michigan University, and also of the Board of the Michigan Theater Foundation.

He served as a Lieutenant in the Judge Advocate General's Corps in the United States Navy from 1968 to 1971 and as a military judge in the Republic of Vietnam. He is a member of the Veterans of Foreign Wars, Derezinski Post No. 7729, the International Association of Defense Counsel, the National Health Lawyers' Association, and the National Association of College and University Attorneys, and the Michigan Council of School Attorneys.

MAURA D. CORRIGAN

Judge Corrigan is a public member of the Michigan Law Revision Commission and has served since her appointment in November 1991.

Judge Corrigan is a judge on the Michigan Court of Appeals and was nominated by her colleagues and appointed by the Michigan Supreme Court to serve as Chief Judge of the Court of Appeals, effective January 1, 1997.

She is a graduate of St. Joseph Academy, Cleveland, Ohio; Marygrove College; and the University of Detroit Law School. She is married and has two children.

Prior to her appointment to the Court of Appeals, Judge Corrigan was a shareholder in the law firm of Plunkett & Cooney, P.C. She earlier served as First Assistant United States Attorney for the Eastern District of Michigan, Chief of Appeals in the United States Attorney's Office, Assistant Wayne County Prosecutor, and a law clerk on the Michigan Court of Appeals. She was selected Outstanding Practitioner of Criminal Law by the Federal Bar Association as well as awarded the Director's Award for superior

performance as an Assistant United States Attorney by the United States Department of Justice. She has served on numerous professional committees and lectured extensively on law-related matters.

GEORGE E. WARD

Mr. Ward is a public member of the Michigan Law Revision Commission and has served since his appointment in August 1994.

Mr. Ward has been the Chief Assistant Prosecuting Attorney in Wayne County since January 1986. Prior to this, he was a clerk to a justice of the Michigan Supreme Court and in private civil practice for twenty years in the City of Detroit.

He is a graduate of Sts. Peter and Paul High School, Saginaw, the University of Detroit, and the University of Michigan Law School. He is married and the father of five children.

Mr. Ward is an Adjunct Professor of State and Local Government and Franchise Law at the Detroit College of Law at Michigan State University; a member of the Boards of Directors of Wayne Center, Wayne County Catholic Social Services and Wayne County Neighborhood Legal Services; a former member and President of the Board of Control of Saginaw Valley State University; a former commissioner of the State Bar of Michigan; a former commissioner and President of the Wayne County Home Rule Charter Commission; and former Executive Director of the City of Detroit Charter Revision Commission.

BILL BULLARD, JR.

Mr. Bullard is a legislative member of the Michigan Law Revision Commission and has served on the Commission since July 1996.

Mr. Bullard is a Republican State Senator representing the 15th Senatorial District. He was first elected to the Michigan House of Representatives in 1982 and served in that body until his election to the Senate in June 1996. He is currently Chairman of the Senate Government Operations Committee and also serves on the Education, Health Policy and Senior Citizen Committees.

He is a graduate of the University of Michigan and the Detroit College of Law. He is married and has three children.

Mr. Bullard is the recipient of the first annual "Legislator of the Year" award from the Michigan Townships Association and also the Guardian Award from the National Federation of Independent Business.

GARY PETERS

Mr. Peters is a legislative member of the Michigan Law Revision Commission and has served on the Commission since June 1995.

Mr. Peters is a Democrat State Senator representing the 14th Senatorial District. He was elected to the Michigan Senate in November 1994. He serves as Vice Chair of the Senate Finance Committee, and a member of the Education, Judiciary, and Families, Mental Health and Human Services Committees.

Prior to being in the Legislature, Mr. Peters was Vice President, Investments, for a major national financial services firm. He serves as a Securities Arbitrator for the New York Stock Exchange, National Association of Securities Dealers, and the American Arbitration Association.

Mr. Peters taught Strategic Management and Business Policy at Oakland University, and was an instructor in the Finance & Business Economics Department at Wayne State University. His educational credentials include a B.A. from Alma College (Magna Cum Laude, Phi Beta Kappa), an M.B.A. in Finance from the University of Detroit, and a J.D. from Wayne State University Law School.

His previous government experience includes a term on the Rochester Hills City Council where he served as Chair of the Solid Waste Management Committee, Vice Chair of the Budget & Finance Committee, and a member of the Zoning Board of Appeals and Paint Creek Trailways Commission.

Mr. Peters' community involvement includes serving on the Board of Directors for Common Cause of Michigan, a member of the Environmental Policy Advisory Committee for the Southeast Michigan Council of Governments (SEMCOG) and as Chair of the Air Issues Committee for the Michigan Sierra Club.

Senator Peters is also a commissioned officer in the U.S. Naval Reserve. He is married and has three children.

MICHAEL E. NYE

Mr. Nye is a legislative member of the Michigan Law Revision Commission and has served on the Commission since March 1991.

Mr. Nye is a Republican State Representative representing the 58th House District. He was first elected to the Michigan House in November 1982. He is Vice-Chair of the House Judiciary Committee and serves on the Corrections and Agriculture Committees.

He is a graduate of Purdue University and University of Detroit Law School. He is married and has two children.

Mr. Nye was named the 1991 Legislator of the Year by the Michigan Association of Chiefs of Police and the 1990 Michigan Environmental Legislator of the Year by the Michigan Environmental Defense Association.

He is a member of the Michigan Sentencing Guidelines Commission, a member of the Trial Court Assessment Commission, and Chairman of the American Legislative Exchange Council (ALEC) Task Force on Criminal Justice. He has received the Michigan Aeronautics Commission's Individual Award of Excellence (1996), and the Michigan Association of Counties special award for court reform legislation.

Mr. Nye has been a leader against Drunk Driving and has received the GLADD award (Government Leader Against Drunk Driving) from the Mothers Against Drunk Drivers.

TED WALLACE

Mr. Wallace is a legislative member of the Michigan Law Revision Commission and has served on the Commission since April 1993.

Representative Wallace is a Democrat State Representative representing the 5th House District. He was first elected to the Michigan House in November 1988. He is a member of the Michigan Sentencing Guidelines Commission, and serves in the House as an Assistant Floor Leader. He is also the Democratic Vice-Chair of the House Judiciary and Civil Rights Committee and a member of the House Tax Policy Committee.

Representative Wallace served in the U.S. Navy during the Vietnam war and is an in-active member of the Michigan National Guard.

He holds a Bachelor of Science Degree in Accounting from Wright State University and a law degree from the University of Michigan Law School. He also took post-graduate classes at the University of Michigan Institute of Public Policy, and post-legal classes at Wayne State Law School.

Representative Wallace is a practicing attorney in the Detroit area and was previously an adjunct professor at Wayne State University and an assembler for the Chrysler Corporation. Representative Wallace has been a tax analyst for the General Motors Corporation and a tax accountant for Arthur Anderson and Company.

He is affiliated with the Michigan Democratic Party, Urban League, T.U.L.C., University of Michigan Alumni Association, and other various legal organizations. He is also a life member of the N.A.A.C.P. and a member of the issues committee of the Michigan State N.A.A.C.P. His past history has included tenure as President of the Democratic Voters League; Vice-President, Young Democrats; Member, Board of Governors Young Democrats; Chairman, Upper Neighborhood City Council; Delegate to the 1972 Black National Convention; and Vice-President, Government Affairs, Greater Dayton Jay-Cees.

Representative Wallace is the immediate-past Chairman of the Michigan Legislative Black Caucus. He serves as Parliamentarian for the National Black Caucus of State Legislators.

Representative Wallace is married and has three children.

DIANNE M. ODROBINA

Since January 1996, Ms. Odrobina, as the Legislative Council Administrator, has served as the ex-officio member of the Michigan Law Revision Commission.

Ms. Odrobina has served the Michigan Legislature in several capacities since 1991, serving as the Director of the Senate Majority Policy Office from February 1993 to January 1996. She was previously an Assistant Prosecuting Attorney for Wayne County and an attorney for Macomb County Friend of the Court.

Ms. Odrobina holds the degrees of Bachelor of Arts in Political Science from Michigan State University, Master of Business Administration from the University of Detroit, and Juris Doctor from Wayne State University.

KEVIN C. KENNEDY

Mr. Kennedy is the Executive Secretary to the Michigan Law Revision Commission, a position he has filled since December 1995.

Mr. Kennedy joined the faculty of the Detroit College of Law at Michigan State University in 1987 and has taught courses in civil procedure, conflict of laws, international trade, and international litigation.

He is a graduate of the University of Michigan, Wayne State University, and Harvard University. He was a law clerk at the U.S. Court of International Trade, was a private practitioner in Hawaii, and served as a trial attorney for the U.S. Department of Justice. He is married.

Mr. Kennedy is the author of more than thirty law review articles concerning international law, international trade, and civil procedure.

GARY GULLIVER

Mr. Gulliver acts as the liaison between the Michigan Law Revision Commission and the Legislative Service Bureau, a responsibility he has had since May 1984.

Mr. Gulliver is currently the Director of Legal Research with the Legislative Service Bureau. He is a graduate of Albion College (with honors) and Wayne State University Law School. He is married and has four children.

Mr. Gulliver is also a Commissioner of the National Conference of Commissioners on Uniform State Laws.