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**SFA****BILL ANALYSIS**

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Senate Bill 1507 (as introduced 11-12-02)  
Sponsor: Senator Bev Hammerstrom  
Committee: Judiciary

Date Completed: 12-2-02

## **CONTENT**

**The bill would amend the Administrative Procedures Act to revise certain procedures for the approval of administrative rules. The bill would do all of the following:**

- Require that an action taken by the Joint Committee on Administrative Rules (JCAR) be by a simple majority of the Committee rather than by concurring majorities of the JCAR members from each chamber of the Legislature.**
- Require the Office of Regulatory Reform (ORR), before approval of a proposed rule, to determine that it met certain criteria specified in the Act and the bill.**
- Require the ORR to publish on its website a copy of the public hearing record regarding a proposed rule.**
- Specify that the ORR's approval of a regulatory impact statement would be a final agency action, subject to judicial review in the same manner as an agency's final decision or order in a contested case.**
- Extend, from 21 to 90 days, the period during which the JCAR may consider and object to a rule.**
- Expand the circumstances under which JCAR may approve a notice of objection to a rule.**
- Allow JCAR to request that the Attorney General review rules and offer an opinion as to their legality or whether they conflicted with other law.**
- Allow an agency to withdraw a proposed rule at any time.**

### Joint Committee on Administrative Rules

The Committee consists of five members of the Senate and five members of the House of Representatives, appointed in the same manner as standing committee members are appointed. Of the members from each chamber of the Legislature, three are from the majority party and two from the minority party. The chairperson alternates each year between the Senate and the House. The Committee may hold a hearing on a ruled transmitted to it. Under the Act, JCAR action must be by concurring majorities of the members from each house of the Legislature. Under the bill, action by JCAR would have to be by a simple majority of the Committee.

### Office of Regulatory Reform

The Act provides that, if approved by the ORR, an agency may submit a proposed rule to the Legislative Service Bureau (LSB) for its formal certification. The LSB promptly must approve a proposed rule, if it considers the rule to be proper as to all matters of form, classification, and arrangement. The bill would delete a provision that the ORR may approve a proposed rule if it considers the proposed rule to be legal. The bill specifies, instead, that before approval of a proposed rule, the ORR would have to determine that it met the conditions outlined in the Act and the bill as criteria for JCAR to object to a rule.

An agency proposing a rule must transmit a regulatory impact statement to the ORR at least 28 days before a required public hearing. Before the public hearing can be held, the ORR must approve the regulatory impact statement. The proposing agency also must transmit a copy of the regulatory impact statement to JCAR before the public hearing and make copies available to the public at the hearing. The bill would add that the ORR's approval of the regulatory impact statement would be considered a final agency action and would be subject to judicial review under Chapter 6 of the Act in the same manner as a final decision or order of an agency in a contested case. (Under Chapter 6, judicial review of a final decision or order in a contested case is 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 of such provisions, judicial review is by petition for review filed in the circuit court for the county in which the petitioner resides or has his or her principal place of business, or in the Circuit Court for Ingham County.)

### JCAR Consideration and Objection

After receiving a letter of transmittal proposing a rule, JCAR has 21 calendar days to consider the rule and to object to it by filing a notice of objection approved by a concurrent majority of the Committee members. Under the bill, JCAR would have 90 days to consider the rule and to object to it by filing a notice of objection approved by a simple majority of the Committee members.

The Committee may approve a notice of objection only if JCAR affirmatively determines that one or more of the following conditions exist:

- The proposing agency lacks statutory authority for the rule.
- The agency is exceeding the statutory scope of its rule-making authority.
- There exists an emergency relating to the public health, safety, and welfare that would warrant disapproval of the rule.
- The rule is in conflict with State law.
- A substantial change in circumstances has occurred since enactment of the law upon which the proposed rule is based.
- The rule is arbitrary or capricious.
- The rule is unduly burdensome to the public or to a licensee licensed by the rule.

The bill would add all of the following to grounds for approval of a notice of objection:

- The rule was not authorized by the statute under which the rule was written.
- The rule was not within the subject matter covered by the statute.
- The rule was not in compliance with the intent of the statute.
- The regulatory impact statement was incomplete, inaccurate, or inadequate or did not consider relevant information.

The bill specifies that JCAR could request the Attorney General to review the rules and to offer an opinion as to their legality or whether they conflicted with other law. Upon submission of a request, JCAR would have an additional 90 days to consider the rule and file a notice of objection. The Attorney General would have to respond within 60 days after JCAR submitted a request.

Under the Act, if JCAR files a notice of objection within the prescribed time period, the Committee chair, alternate chair, or any member must introduce bills in both houses of the Legislature simultaneously. Each chamber must place the bill or bills directly on its calendar. The bills must contain one or more of the following:

- A rescission of a rule upon its effective date.
- A repeal of the statutory provision under which the rule was authorized.

-- A stay of the proposed rule's effective date for up to one year.

Under Senate Bill 1507, a bill could stay a proposed rule's effective date for up to two years. Also, a bill could, in substance, amend or limit the application of a rule.

A notice of objection filed in accordance with the Act stays the ORR's ability to file the rule with the Secretary of State as follows:

- The time period is stayed for 21 consecutive calendar days.
- If both houses of the Legislature are not in session for more than 14 but fewer than 21 consecutive calendar days following the filing of a notice of objection, the 21-day period is tolled, with the remainder of the 21-day period available for consideration upon the return of both houses. (The combined period for consideration by JCAR and full Legislature may not exceed 63 consecutive calendar days.)
- If both houses of the Legislature are not in session more than 21 consecutive calendar days following the filing of a timely notice of objection, the 21-day time period is tolled, with the remainder of that period available for consideration upon the Legislature's return.

Under the bill, instead, the ORR's ability to file the rule would be stayed for 90 consecutive calendar days, but, if both houses of the Legislature were not in session for more than 14 consecutive calendar days, the 90-day period would be tolled with the remainder available for consideration upon the Legislature's return.

#### Withdrawal of a Proposed Rule

The Act provides that an agency may withdraw a proposed rule under the following circumstances:

- With permission of the JCAR chair and alternate chair, the agency may withdraw the rule and resubmit it. If permission to withdraw is granted, the time period for JCAR consideration and objection is tolled until the rule is resubmitted, except that JCAR has at least seven calendar days after resubmission to consider the resubmitted rule.
- Without permission, the agency may withdraw the rule and resubmit it. If permission to withdraw is not granted, a new and untolled time period begins upon resubmission of the rule for JCAR consideration.

The bill would delete that provision. Instead, an agency could withdraw a proposed rule at any time. If the rule were resubmitted, JCAR would have a new 90-day period to consider the rule and to file a notice of objection.

MCL 24.235 et al.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have an indeterminate impact on State government. Costs would result from: 1) the requirement that the Office of Regulatory Reform publish copies of public hearing records on its website; 2) the provision that would make approval of regulatory impact statements by the ORR subject to judicial review in which case costs would depend on the amount of resulting litigation; and 3) new requirements related to Attorney General opinion requests and time requirements regarding the Attorney General's response, which could require additional staff based on budget constraints or the redirection of existing resources.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.