



**House
Legislative
Analysis
Section**

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INCREASE JCAR MEMBERSHIP

RECEIVED

House Bill 4124 as introduced
First Analysis (2-24-87) Floor Copy

APR 08 1987

Sponsor: Rep. Michael J. Griffin
Committee: House Oversight

Mich. State Law Library

THE APPARENT PROBLEM:

The Joint Committee on Administrative Rules (JCAR), which was created by the Administrative Procedures Act of 1969, considers all administrative rules proposed by state agencies, once the proposed rules have been approved by the Legislative Service Bureau and the Attorney General. The JCAR can approve or disapprove a proposed rule, or it can certify an impasse when a majority fails either to approve or disapprove the proposed rule.

Some people contend that the JCAR's workload is such that membership on the committee should be increased. In addition, questions have been raised over some of the language specifying the procedure for adopting or disapproving proposed rules. The JCAR has recommended clarification of this language.

THE CONTENT OF THE BILL:

The bill would amend the Administrative Procedures Act, increasing the membership of the Joint Committee on Administrative Rules from ten to twelve by adding one additional member each from the House of Representatives and the Senate. The bill also would change some of the language specifying the procedure to be followed by the JCAR in considering proposed rules. Under Section 45, subsection 6 of the present law (most recently amended by Public Act 292 of 1986), the JCAR may have up to two months to approve a proposed rule. However, if the committee decides by a majority vote that it needs more time, it may take an additional month (for a total of not more than three months) to consider and approve the rule in question. Prior to 1986, the JCAR had two months to disapprove a proposed rule or to certify an impasse; Public Act 292 of 1986 allowed the committee to extend the time from two months to the three months allowed in the section concerning approval of proposed rules. The bill would remove the language concerning time extensions from the sections concerning approval or disapproval of rules or certification of impasses, and instead would insert that language in the section specifying the amount of time the JCAR may take to consider a rule.

Present law also specifies what happens if the committee disapproves a proposed rule or certifies an impasse. The bill would define "impasse" by requiring the committee chairperson to certify an impasse after votes for approval and disapproval had failed to receive concurrent majorities.

Finally, the law says that if the JCAR has not scheduled or taken a recorded vote to approve, disapprove, or certify an impasse on a rule before the expiration of the time permitted, it must return the rule to the submitting agency and cause concurrent resolutions of approval to be introduced in both the House and the Senate. The bill would say that if the time permitted expires and the committee has not taken action under either the section governing approval of rules or that governing disapproval or

certification of an impasse, the committee would have to return the rule to the agency and the committee chairperson and alternate chairperson would have to "cause concurrent resolutions approving the rule to be introduced in both houses simultaneously" (MCL 24.235 and 24.245).

FISCAL IMPLICATIONS:

Fiscal information is not available at this time (2-24-87).

ARGUMENTS:

For:

The Joint Committee on Administrative Rules was created in 1947 by an amendment to Public Act 88 of 1943. The committee was authorized to meet between legislative sessions and to suspend until the next regular session of the legislature any rule not in conformity with the statute under which it had been promulgated. At first, the JCAR reviewed only those promulgated rules about which a complaint was filed. However, in 1958, the law was further amended to require the committee to consider all rules referred to it. Then in 1964, the law was amended once more to allow the JCAR to meet during, as well as between, legislative sessions. Since then the committee has acted basically on a year-round basis.

In 1969, the Administrative Procedures Act was adopted, taking effect on July 1, 1970. This new law was designed to update and facilitate the rule-making process. Based on the National Conference of Commissioners on Uniform State Laws' Revised Model State Administrative Procedures Act, the act offered extensive procedures for the processing and publication of rules, for contested case hearings, and for judicial review. Changes to the act in 1971 and 1977 made the JCAR an active, rather than merely reactive, agent in the formulation of administrative rules. In 1971 the committee began extensively reviewing rules before they were formally adopted and promulgated by an agency, and since 1977 agencies have been required to get approval for proposed rules from the JCAR or the legislature before they can be adopted and promulgated. These and subsequent changes have significantly increased the committee's oversight authority and workload.

In 1978, membership on the committee was increased from eight to ten, adding two members from the Senate for a total of five members from each house. Given the committee's workload, which greatly increased in the 1970s, and the fact that the committee generally meets weekly while the legislature is in session, some people argue that committee membership should be increased from the present ten to a total of twelve by adding a member from each house.

H.B. 4124 (2-24-87)

For:

Public Act 292 of 1986, which amended the Administrative Procedures Act of 1969, was intended, in part, to clarify some of the language regarding the procedures for approving or disapproving proposed administrative rules or for certifying an impasse when the JCAR neither approved nor disapproved a proposed rule or set of rules. However, it did not succeed, and the bill would do this by (a) transferring the language regarding time extensions in the appropriate section of existing law, and (b) making clear when the committee had reached an impasse. In addition, some language was added which reflects the way the committee actually acts in practice.

POSITIONS:

No positions were available at the time of this analysis (2-24-87).