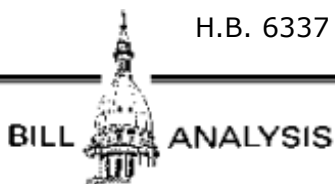




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 6337 (Substitute H-2 as passed by the House)  
Sponsor: Representative Ken Bradstreet  
House Committee: Energy and Technology  
Senate Committee: Technology and Energy

Date Completed: 12-7-04

### **CONTENT**

**The bill would amend the Michigan Telecommunications Act (MTA) to delete a provision that prohibits the Public Service Commission (PSC) from promulgating rules, and to provide that rules promulgated by the PSC after January 1, 1996, would be considered to have been promulgated under the authority granted to the PSC to promulgate rules under the Act.**

The MTA authorizes the PSC to promulgate rules under the Administrative Procedures Act (APA), but also prohibits the PSC from promulgating rules if the Michigan Supreme Court rules that Sections 45 and 46 of the APA are unconstitutional and a statute requiring legislative review of administrative rules is not enacted within 90 days of the ruling. (The Supreme Court ruled in 2000 in *Blank v Department of Corrections* that Sections 45 and 46 of the APA were unconstitutional. In 2004, the Court of Appeals cited that opinion in *Verizon v Michigan Public Service Commission* in determining that the PSC did not have the authority to promulgate quality of service rules concerning out-of-service telephone repairs. Both opinions and the relevant sections of the APA are described below, under **BACKGROUND.**)

As noted above, rules promulgated by the PSC after January 1, 1996, would be considered to have been promulgated under the rule-making authority granted to the PSC by the MTA. The bill states that this provision could not be construed to limit or affect an appeal or other legal challenge to any rule on the ground that the rule was not in compliance with or exceeded the authority granted the Commission under the MTA.

The bill also would require a proceeding to promulgate rules under the MTA to be concluded within 180 days from the date that the proceeding was initiated.

MCL 484.2213

### **BACKGROUND**

#### *Blank v Department of Corrections*

Under Sections 45 and 46 of the APA, the Joint Committee on Administrative Rules (JCAR) was authorized to approve or disapprove rules promulgated by executive agencies. In this case, prison inmates challenged the validity of visitation rules that the Department of Corrections (DOC) adopted without JCAR's approval, on the ground that the DOC acted in violation of the authority granted JCAR under the APA.

Article III, Section 2 of the Michigan Constitution states, "the powers of government are divided into three branches... No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Additionally, Article IV, Section 22 requires all legislation to be by bill, and Section 33 requires every bill passed by the Legislature to be presented to the Governor before it becomes a law.

A majority of the Supreme Court justices agreed that the authority granted JCAR under the APA usurped the Governor's authority in violation of the separation of powers doctrine. Three justices also concluded that Sections 45 and 46 violated the enactment and presentment requirements. The applicable subsections of Sections 45 and 46 subsequently were deleted from the statute.

#### Verizon v Michigan Public Service Commission

On September 16, 2004, the Michigan Court of Appeals reversed a lower court's ruling that the PSC had the authority to promulgate quality of service rules concerning out-of-service repairs. Although the MTA authorizes the PSC to promulgate rules and issue orders to establish and enforce quality standards for the provision of telecommunications services, the Court nullified rules that were adopted in August 2002.

The Court of Appeals pointed out the MTA had been amended after the *Blank* decision. According to the Court, "[T]he Legislature specifically recognized the possibility that our Supreme Court could hold... [Sections 45 and 46 of the APA] to be unconstitutional", and "provided that the PSC would retain the power to promulgate rules if a statute requiring legislative review of administrative rules were enacted within ninety days after such a Supreme Court decision". The Supreme Court decided *Blank* on June 20, 2000, and Public Act 295 of 2000 amended the MTA effective July 17: after the *Blank* decision and before the 90-day period had expired. Public Act 295, however, did not provide for legislative review of administrative rules. "[T]herefore, the PSC lacked authority under the MTA to promulgate further rules."

Legislative Analyst: Julie Koval

#### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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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.