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BILL ANALYSIS

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Senate Bill 551 (as introduced 5-31-05)
Sponsor: Senator Bruce Patterson
Committee: Technology and Energy

Date Completed: 5-31-05

CONTENT

The bill would amend the Michigan Telecommunications Act (MTA) to eliminate a July 1, 2005, sunset on the Public Service Commission's (PSC's) authority to promulgate rules.

Section 213 of the MTA authorizes the PSC to promulgate rules under the Administrative Procedures Act (APA). Previously, however, the section also prohibited the PSC from promulgating rules if the Michigan Supreme Court ruled that Sections 45 and 46 of the APA were unconstitutional and a statute requiring legislative review of administrative rules were 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**.)

Public Act 591 of 2004 amended Section 213 to provide that rules promulgated by the PSC after January 1, 1996, are considered to have been promulgated under the rule-making authority granted to the PSC by the MTA. Section 213 states that specific rules may not be enforced until a court determines that the rules do not exceed the PSC's authority under the MTA, and that it is the Legislature's intent that providers voluntarily comply with the rules until a court makes a determination. Under this section, a provider that agrees voluntarily to abide by the rules does not relinquish its rights to challenge the rules' legality.

Section 213 also requires a proceeding to promulgate rules under the MTA to be concluded within 180 days from the date that the proceeding is initiated.

Under Public Act 591, Section 213 is to be repealed on July 1, 2005. The bill would repeal this provision.

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.