

## JOINT COMMITTEE ON ADMINISTRATIVE RULES: CHANGES TO PROPOSED RULES

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**Senate Bill 962 (S-1) as Passed by the Senate**  
**Sponsor: Sen. Jim Stamas**  
**Committee: Oversight and Ethics**  
**Complete to 9-21-16**

Analysis available at  
<http://www.legislature.mi.gov>

### BRIEF SUMMARY:

Senate Bill 962 (S-1) would amend the Administrative Procedures Act to modify the process by which agency rules are promulgated in addition to clarifying that the former responsibilities of other agencies now fall under the administration of the Office of Performance and Transformation (OPT). A detailed description of these changes follows, after the *Background* section.

### BACKGROUND:

The Administrative Procedures Act, 1969 PA 306 as amended, outlines the procedural steps for the promulgation of administrative rules. Administrative rules are the regulations that executive agencies enforce in order to administer their regulatory duties.

Generally, the current process for the promulgation of administrative rules follows these procedural steps outlined in statute:

1. The executive agency proposing the new rule electronically submits the proposed rule to the Legislative Services Bureau (LSB), which has 21 days to formally certify the rule.
2. The executive agency will post a public hearing, through a variety of outlets<sup>1</sup>, for the proposed rule between 10 and 60 days prior to the planned hearing.
3. Prior to the public hearing, the executive agency notifies the Office of Performance and Transformation (OPT – located within the State Budget Office). The OPT will post a notice of the public hearing in the Michigan Register.
4. After the public hearing, the executive agency will compile a report, which includes:
  - a. a synopsis of public comments from the public hearing
  - b. a copy of the request for rulemaking
  - c. and a copy of the regulatory impact statement<sup>2</sup>, drafted by the agency

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<sup>1</sup> MCL 24.242 requires, at a minimum, that notice of the public hearing be posted in at least three newspapers in general circulation in different parts of the state, with at least one being based in the Upper Peninsula.

<sup>2</sup> The regulatory impact statement must be transmitted to the OPT 28 days prior to the public hearing; the statement must be approved by the OPT before the public hearing can commence; the statement must be transmitted to JCAR before the public hearing; the statement must be posted on the agency's website at least ten days prior to the public hearing; and the statement must be made available to the public at the public hearing.

5. The OPT transmits the aforementioned report, with any changes to the rule resulting from the public hearings, to the Joint Committee on Administrative Rules (JCAR)<sup>3</sup>.
6. Once JCAR has received the transmittal from OPT, it has 15 days to either waive the remaining session days (concur with the rule) through an affirmative vote of the concurrent majority<sup>4</sup>, or approve a notice of objection to the rule through an affirmative vote of the concurrent majority.

If JCAR decides to waive the remaining session days, or the session days lapse with no JCAR action, the OPT files the rule and the certificate of approval from LSB with the Secretary of State and the rule takes immediate effect – unless another effective date is indicated in the rule.

If JCAR decides to object<sup>5</sup> to the rule, the Legislature has 15 session days from the transmittal of the notice of objection to the OPT to pass legislation on the subject of the rule. After which, the rule cannot be submitted to the Secretary of State by the OPT, unless the legislation on the subject of the rule is vetoed by the governor, as provided by law.

## **SUMMARY OF PROPOSED CHANGES:**

As noted above, Senate Bill 962 (S-1) would amend the Administrative Procedures Act to modify the process by which agency rules are promulgated in addition to clarifying that the former responsibilities of other agencies now fall under the administration of the Office of Performance and Transformation (OPT). The specific procedural changes are outlined below:

### Change to a Proposed Rule

This bill would allow an executive agency to withdraw, change, and resubmit a rule for consideration and promulgation without restarting the entire rulemaking process as long as the rule, as changed, does not have a regulatory impact, or impact on small businesses, and is not more burdensome than the original rule.

### Procedural Options for JCAR

As described above, JCAR has 15 session days after OPT transmits the final rule set to concur with (and waive remaining session days), or to issue a notice of objection for the proposed rule. This bill would adjust the procedures for issuing a notice of objection and provide other courses of action for JCAR to follow if it objects to a proposed rule, within its 15 session day window. These include:

1. ***Enact legislation***, which would address the subject of the proposed rule and would not allow the rule to take effect unless vetoed by the governor, as provided by law. Bills would be introduced by the Chair and Co-Chair of JCAR, in their respective chambers, and be given preparation priority by the Legislative Service Bureau

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<sup>3</sup> JCAR consists of five members each from the House and Senate, with the position of the chair rotating between the chambers each year.

<sup>4</sup> At majority of members from each chamber serving on JCAR.

<sup>5</sup> Pursuant to the Administrative Procedures Act, 1969 PA 306, JCAR may only object to a proposed rule if one or more certain conditions apply.

(LSB). If this course of action is taken, the OPT would not be authorized to submit the proposed rule to the Secretary of State until one calendar year from the introduction of the associated bills has elapsed, unless the bills are defeated in either chamber or vetoed by the governor, as provided by law.

2. ***Propose that the rule be changed***, which gives the executive agency 30 days to either resubmit a changed rule to JCAR or decide to not change the original rule. If the agency chooses to resubmit a changed rule, the OPT would publish the changed rule and assess if a new regulatory impact statement is required. If a new regulatory impact statement is required, an additional public hearing must be held. If the executive agency chooses not to withdraw and resubmit a changed rule, the agency would notify JCAR and supply reasons for not changing the rule. JCAR would then have 15 session days to take another course of action.
3. ***Approve a notice of objection***, via a concurrent majority. After a notice of objection is filed, JCAR would have 15 session days to either introduce bills in both chambers, which rescind the rule on its effective date, repeal the statutory provision authorizing the rule, or delay the effective date of the rule for up to one year, or rescind the notice of objection.

#### **FISCAL IMPACT:**

Due to the additional options authorized to the JCAR for responding to proposed rules, and the administrative requirements associated with these options, there could be an indeterminate, but minimal, increase in state administrative costs. These additional administrative requirements include an evaluation and determination of small business impact. Potential new reports and public hearings for rules determined to be burdensome to small businesses would be a minimal cost incurred by the agency proposing the rule change.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.