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#  Joint Committee on Administrative Rules

**Annual Report 2016-2017**

***The Fiscal Year 2017 marks the seventeenth year that the Joint Committee on Administrative Rules (JCAR) has been operating under the revised administrative rulemaking process outlined in 1999 amendments to the Administrative Procedures Act of 1969, which took effect in April 2000. The following report details the rulemaking process and summarizes JCAR’s activities and accomplishments during the fiscal year.***

**Role of JCAR in rulemaking process**

Administrative rules issued by state agencies implement or apply law enforced or administered by those agencies. Although administrative rules affect the daily lives of Michigan residents, most people are unaware of the rulemaking process unless they are directly impacted by the actions of a state agency. When an individual builds a home, becomes licensed or certified in a regulated profession, or discovers that a landfill is to be located in his or her neighborhood, administrative rules become a major concern. In general terms, JCAR serves citizens impacted by proposed rules by ensuring that agencies respond to public concerns before promulgating a rule and by providing the public a legislative forum in which to express their views about proposed rules.

For a number of years, the Legislature’s role in the approval or disapproval of administrative rules proposed by state agencies was considered controversial. A lawsuit involving a set of prison visitation rules from the Department of Corrections forced a judicial examination of that role in *Blank v. Department of Corrections,* 462 Mich. 103, 611 N.W.2d 530 (2000). In anticipation of the Michigan Supreme Court’s decision in *Blank*, the Legislature enacted revisions to the Administrative Procedures Act of 1969 (APA) to place JCAR on constitutional ground in its role in the rulemaking process. Under the amended APA, which took effect April 1, 2000, JCAR retains its status as a legislative committee capable of reviewing rules before promulgation. However, JCAR cannot approve or disapprove administrative rules. Instead, JCAR may file a notice of objection to temporarily halt the filing of rules with the Secretary of State and introduce legislation to address its concerns about rules.

Other amendments to the APA were adopted in 2004 with the Legislature's enactment of 2004 PA 491. The revisions to the APA allow JCAR members additional time to review proposed rules prior to their effectiveness. For instance, JCAR has 15 session days to review a set of rules and potentially file a notice of objection to temporarily halt the progress of the rules. Alternatively, JCAR can waive the remaining session days and allow rules to be filed and go into effect immediately. The APA was again amended by 2016 PA 513 to give JCAR additional options when responding to a proposed rule. Under the amendments, JCAR may continue to file a notice of objection but may also propose that a rule be changed or that bills be introduced that enact the subject matter of the rule into law. If JCAR proposes that a rule be changed, the agency must comply with procedures set forth in the APA. If JCAR introduces bills to enact the subject matter of the proposed rule into law, the agency may not file the rule with the Secretary of State until 270 days after the bills are introduced.

In summary, the APA amendments give JCAR members the opportunity for involvement and inquiry during the rulemaking process. From an agency’s initiation of the rulemaking process by Request for Rulemaking (RFR), to the final day of the JCAR review period, JCAR members can track and participate in the development of administrative rules. Ultimately, the JCAR review process allows legislators a chance to help shape the many agency rules that affect Michigan residents.

**Organization of JCAR**

JCAR is a joint legislative committee that has existed for over 50 years that consists of 10 legislators – five members of the Senate and five members of the House of Representatives. JCAR committee members are appointed in the same manner as for standing committees, and they serve a term of two years. Three of each chamber’s members represent the majority party, and two represent the minority party. The JCAR chairperson alternates annually between the chambers. All official action taken by JCAR must be by concurring majorities.

JCAR maintains a nonpartisan staff that is responsible for processing state agency proposed rules that are transmitted to JCAR via the Office of Performance and Transformation (OPT), which was established by Executive Order 2016-2. In addition, JCAR staff provides committee members with background and legal analysis on proposed rules, attends agency public hearings on proposed rules, and schedules committee hearings on proposed rules at the direction of the JCAR chairperson. The Legislative Council Administrator has responsibility for supervising JCAR staff, budgeting, procurement, and related functions.

**2016-2017 JCAR Members**

Senator Jim Stamas (Alternate Chair, 2017)

Senator Tory Rocca

Senator Mike Kowall

Senator Morris W. Hood, III

Senator Curtis Hertel, Jr.

Representative Steven Johnson (Chair, 2017)

Representative John Reilly

Representative Shane Hernandez

Representative Andy Schor

Representative Jeremy Moss

**Summary of rulemaking activity, 2016-2017**

JCAR held 2 committee meetings in 2017.

During the fiscal year 2017 (October 1, 2016 to September 30, 2017), JCAR staff sent over **300 notices about rules in progress** to legislators. In addition, in the fiscal period JCAR received **38 final rule sets**.

A summary of the proposed rule documents that JCAR transmitted to committee members and the standing committees of the Senate and House of Representatives are as follows:

* **76 Requests for Rulemaking** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that deal with the subject matter of the proposed rule.
* **51 Weekly Lists of Requests for Rulemaking** were received and distributed to JCAR members.
* **48 Notices of Proposed Policies and 0 Standard Form Contracts** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that deal with the subject matter of the proposed policy or standard form contract.
* **67 Proposed Draft Rules** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that deal with the subject matter of the proposed rule.
* **31 Notices of Public Hearing** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that deal with the subject matter of the proposed rule.
* **38 proposed final rule packages,** including a JCAR rule analysis, transmittal letter, copy of the rule, and Agency Report and Regulatory Impact Statement, were distributed to JCAR members and members of the Legislature.
* **0 Notice of a Guideline** was received.
* **15 Annual Regulatory Plans** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that deal with the subject matter of the agency proposals.
* **4 Emergency Rules** were distributed to JCAR members and members of the Standing Committees of the Senate and House of Representatives that dealt with the subject matter of the proposed rule.