



S.B. 87

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Eliminates the Joint Committee on Agency Rule Review (JCARR) on January 3, 2000, and creates several subject matter rule review joint committees to review proposed, newly adopted, and existing rules of rule-making agencies.
- Creates the Rule Review Coordinating Committee to refer a rule to the rule review joint committee having jurisdiction over the rule's subject matter.

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CONTENT AND OPERATION

Overview of the existing rule-making process and review of rules

Administrative agencies are often granted the authority to adopt rules to carry out policies or administer programs. A rule becomes effective only if the agency adopting it complies with the rule-making method prescribed by the statute granting the rule-making authority. There are two general statutory rule-making methods under which a rule may be adopted: under the Administrative Procedure Act (Chapter 119.), which requires that the agency give public notice of a rule and hold hearings on it, or under R.C. § 111.15, which requires neither public notice nor public hearings on a rule. Generally, if an agency is not required to follow the rule-making procedures in Chapter 119., it must follow the rule-making procedures of § 111.15.

In most cases, Chapter 119. rules and § 111.15 rules are required to be filed with and reviewed by the Joint Committee on Agency Rule Review (JCARR), which is a permanent legislative committee that was created in the General Assembly in 1978. JCARR is composed of ten members, five from the House of Representatives and five from the Senate. JCARR is primarily responsible for reviewing proposed and adopted rules and, as part of an agency's cyclical review of its adopted rules, is responsible for reviewing whether the agency has complied with certain review criteria.

Chapter 119. rules

If an agency is required to adopt, amend, or rescind its rules under Chapter 119., it must give public notice of its intention and, at least 60 days prior to adopting the proposed rule, amendment, or rescission, file copies of it and a rule summary and fiscal analysis with the Secretary of State, the Legislative Service Commission, and JCARR.¹ The agency must hold a public hearing on the proposed rule-making action no earlier than the 30th nor later than the 50th day after the filing. As the notice and hearing procedure is progressing, JCARR reviews the rule-making action and may recommend to the General Assembly that it adopt a concurrent resolution invalidating the proposed rule, amendment, or rescission if it finds that (1) the rule-making agency has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission, (2) a conflict exists with another rule, amendment, or rescission, or with the legislative intent of the statute under which the rule-making agency proposed the rule, amendment, or rescission, or (3) the rule-making agency failed to prepare a complete and accurate

¹ R.C. § 127.18, continued by the bill, requires that a rule-making agency prepare a complete and accurate rule summary and fiscal analysis of each proposed rule in the form prescribed by JCARR (in the bill, the Rule Review Coordinating Committee).

rule summary and fiscal analysis of the rule, amendment, or rescission. This review procedure is known as "legislative review and invalidation." (Sec. 119.03.)

Sixty-one days after filing the proposed rule-making action, and after the time for legislative review and invalidation has expired and the rule-making action has not been invalidated, the agency may issue an order adopting the proposed rule, amendment, or rescission, and file it in final form.² A Chapter 119. rule-making action takes effect as specified by the adopting agency, but not earlier than the tenth day after being filed in final form.³ (Secs. 119.03(D) and 119.04.)

Section 111.15 rules

An agency that intends to adopt a § 111.15 rule must file copies of the proposed rule and rule summary and fiscal analysis with the Secretary of State and the Legislative Service Commission and, if the rule-making agency is a board, commission, department, division, or bureau of the state government, with JCARR for legislative review and invalidation, unless the rule falls within the statutory exemptions from filing with JCARR (for instance, proposed internal management rules). The agency is not required to give public notice of the rule or hold a public hearing. If the rule is exempt from filing with JCARR, the agency may adopt it immediately and file it in final form. In that case, it takes effect as specified by the adopting agency, but not earlier than the tenth day after being filed in final form.⁴

If the agency is required to file the proposed rule with JCARR, it must file copies of the proposed rule with JCARR at least 60 days before adopting it and

² *The concurrent resolution invalidating a proposed rule, amendment, or rescission generally must be adopted by the General Assembly prior to the 60th day after the original version of the text of a proposed rule, amendment, or rescission is filed with JCARR (under the bill, the chairperson of the Rule Review Coordinating Committee), but, if the House or Senate does not hold five floor sessions within that time period after receiving JCARR's recommendation of the adoption of such a concurrent resolution, the time is extended until those sessions are held.*

³ *The Governor may suspend the Chapter 119. rule-making procedure if an emergency requires the adoption, amendment, or rescission of a rule. An emergency rule takes effect immediately on filing, but expires on the 91st day after its effective date. (Sec. 119.03(F).)*

⁴ *An agency may adopt an emergency § 111.15 rule without complying with these requirements. The emergency rule takes effect immediately on being filed or on a later date and time specified by the adopting agency, but expires on the 91st day after its adoption. (Sec. 111.15(B)(2).)*

may not file it in final form until the time for legislative review and invalidation has expired or earlier than the 61st day after the rule was filed as a proposed rule.

Elimination of JCARR

The bill eliminates JCARR on January 3, 2000, and requires that it wind up its business in anticipation of its repeal on that date. The bill provides that the same rule review procedures performed by JCARR are to be performed by specialized rule review joint committees of the General Assembly on and after that date. (Sections 3 and 4 of the bill.)

The bill's uncodified sections address the transfer of JCARR's records to the Clerk of the House of Representatives; the creation on January 3, 2000, of the several rule review committees for the second regular session of the 123rd General Assembly; the procedure to appoint members to the Rule Review Coordinating Committee for the second regular session of the 123rd General Assembly; and the Clerk's delivery of JCARR's records to the chairperson of the Rule Review Coordinating Committee and the Committee's transfer of those records to the proper rule review committee. (Sections 5 to 8 of the bill.)

Creation of rule review committees

The bill creates rule review committees, each one of which functions to review proposed, newly adopted, and existing rules concerning the subject matter over which the Senate and House standing committees and standing subcommittees from which its membership is composed have jurisdiction. The bill establishes the procedure to be used *in referring* rules to a particular rule review committee, but the committee, *in reviewing* a rule, and the rule-making agency, in adopting, amending, or rescinding a rule, must continue to comply with the existing review procedures in § 111.15 or Chapter 119. The bill specifies that the several subject matter specialized rule review committees replace and are successors to the nonspecialized JCARR. (Secs. 101.35 and 101.355.)

A rule review committee is a joint committee composed of six members of the Senate and House of Representatives: the chairperson, vice-chairperson, and ranking minority member of the standing committee or standing subcommittee of the Senate, and the comparable persons from the House, having concurrent jurisdiction over a subject matter. A rule review committee is styled "the rule review committee on (insert words descriptive of the committee's subject matter jurisdiction)." (Sec. 101.355.)

When the standing committees and standing subcommittees of the Senate and House are created at the beginning of a General Assembly, and when any

change is later made during the General Assembly in those committees as created, the President of the Senate and Speaker of the House of Representatives are required to consult, determine which standing committees and standing subcommittees of the Senate and House have concurrent subject matter jurisdiction, and report the determination to the Senate and House.⁵ The Senate Clerk and Clerk of the House must spread the report on the journal of their respective houses. The Senate and House may agree or not agree to the report. If the report is not agreed to by both the Senate and the House, the Speaker and President must repeat the procedure and make another report. The reported determination of concurrent subject matter jurisdiction as agreed to by the Senate and House effectively creates the several rule review committees for the General Assembly. (Sec. 101.355.)

In the first regular session of a General Assembly, the chairperson of the Senate standing committee or standing subcommittee from which a rule review committee is composed is the chairperson of the rule review committee, and the chairperson of the House of Representatives standing committee or standing subcommittee from which the rule review committee is composed is vice-chairperson. In the second regular session of a General Assembly, their positions switch. The ranking minority member from the house of which the chairperson of the rule review committee is a member is secretary of the rule review committee. (Sec. 101.355.)

If, because of a change in the standing committees and standing subcommittees of the Senate and House of Representatives, rule review committees effectively are dissolved and new rule review committees effectively are created, a newly created rule review committee is deemed to have been created, and is to be organized, as if it had been created upon creation of the standing committees and standing subcommittees at the beginning of the General Assembly (sec. 101.355).

Creation of the Rule Review Coordinating Committee and its general duties

The bill creates a Rule Review Coordinating Committee to essentially perform JCARR's managerial functions. The Committee manages the referral and rereferral of proposed and newly adopted rules to the several rule review committees, transmits informational matters to them, and provides elucidating assistance to them by prescribing the content of the rule summary and fiscal

⁵ Section 6 of the bill basically follows this procedure for establishing rule review committees for the second regular session of the 123rd General Assembly, but requires at the determination be made before January 3, 2000.

analysis (with the advice of the several rule review committees). In discharging these duties, the Rule Review Coordinating Committee may do whatever is necessary and proper to enable the several rule review committees to concentrate on discharging their subject matter specialized substantive review functions by freeing them as much as possible from managerial responsibilities. (Secs. 101.356 and 127.18(E).)

The Rule Review Coordinating Committee consists of six members. The President of the Senate is required to appoint three members of the Senate to the Committee, not more than two of whom are members of the same political party. The Speaker of the House of Representatives shall appoint three members of the House to the Committee, not more than two of whom are members of the same political party.⁶ (Sec. 101.356.)

A member of the Rule Review Coordinating Committee holds office as a member of the Committee during the General Assembly in which the member is appointed to the Committee unless the member earlier ceases to be a member of the house from which the member is appointed to the Committee. The President or Speaker must fill a vacancy on the Committee in the same manner as the original appointment. (Sec. 101.356.)

In the first regular session of a General Assembly, the first named Senate member of the Rule Review Coordinating Committee is chairperson of the Committee, and the first named House of Representatives member of the Committee is vice-chairperson. In the second regular session of a General Assembly, the first named House member of the Committee is chairperson, and the first named Senate member is vice-chairperson. The minority member of the Committee from the house of which the chairperson of the Committee is a member is secretary of the Committee. (Sec. 101.356.)

The Rule Review Coordinating Committee is a joint committee and generally must conduct its business and has the same general powers and duties as other joint committees of the Senate and House of Representatives. The chairperson of the Committee generally has the same powers and duties as the chairperson of other joint committees of the Senate and House. (Sec. 101.356.)

⁶ Section 7 of the bill requires that the appointments to the Committee for the second regular session of the 123rd General Assembly be made on January 3, 2000, or as soon thereafter as possible.

Four members of the Rule Review Coordinating Committee constitute a quorum. Each member of the Committee has one vote. The concurrence of four members is necessary for the Committee to take an action. (Sec. 101.356.)

The chairperson of the Rule Review Coordinating Committee must maintain the Committee's records. Upon adjournment *sine die*, the chairperson must deliver the Committee's records to the Clerk of the House of Representatives. The Clerk must preserve the Committee's records and deliver them to the chairperson of the Rule Review Coordinating Committee in the following General Assembly. (Sec. 101.356.)

Duties and powers of rule review committees in general

The bill provides for legislative review by the rule review committees of all of the following (sec. 101.35):

(1) Proposed § 111.15 rules of a board, commission, department, division, or bureau of the state government, or Chapter 119. proposed rules, amendments, or rescissions, that are required to be filed with a rule review committee for legislative review and invalidation;

(2) Newly adopted rules that are required to be submitted to a rule review committee for a final form review for substantive revisions;

(3) Existing rules that are required by law to be reviewed in a cycle by the rule-making agency not later than five years after their effective date (see, "**Cyclic review of rules**," below).

A rule review committee generally must conduct its business and has the same general powers and duties as other joint committees of the Senate and House, and its chairperson generally has the same general powers and duties as the chairpersons of other joint committees. In addition to reviewing specific proposed, newly adopted, and existing rules, a rule review committee may require a rule-making agency to provide the committee with information relative to the rule-making agency's implementation of its statutory authority. (Sec. 101.355.)

Four members of a rule review committee constitute a quorum. Each member of the committee has one vote. The concurrence of four members is necessary for the committee to suspend an adopted rule in whole or in part, or to recommend adoption of a concurrent resolution invalidating a proposed or adopted rule in whole or in part. (Sec. 101.355.)

The chairperson of a rule review committee must maintain the committee's records. On adjournment *sine die*, or if the committee is earlier dissolved, the

chairperson must deliver the committee's records to the Clerk of the House of Representatives, identifying with particularity any pending matters that have not been completed by the committee. The Clerk must preserve the records and deliver them to the chairperson of the rule review committee that is successor to the rule review committee that generated the records. The Clerk is required to identify with particularity to the chairperson of the successor rule review committee any pending matters that were not completed by the predecessor rule review committee. (Sec. 101.355.)

Reference of a proposed or adopted rule to a rule review committee

The bill provides that, when a proposed rule is filed with the chairperson of the Rule Review Coordinating Committee pursuant to § 111.15 or Chapter 119, for legislative review and invalidation, if the filing is of the original version of a proposed rule, the chairperson must present the proposed rule to the Rule Review Coordinating Committee. If the filing is of a revised version of a proposed rule, the chairperson must examine the revised version and the Committee's records and refer the revised version to the rule review committee that exercised jurisdiction over the original or previous revised version of the proposed rule. (Sec. 101.351(A)(1).)

When an adopted rule is filed with the chairperson of the Rule Review Coordinating Committee, the chairperson must examine the adopted rule and the Committee's records and refer the adopted rule to the rule review committee that had jurisdiction over the latest version of the adopted rule while it was still in proposed form (sec. 101.352(A)(1)).

If the rule review committee that had jurisdiction over the original or previous revised version of the proposed rule, or the latest version of the adopted rule while it was still in proposed form, is extinct, the chairperson of the Rule Review Coordinating Committee must present the revised version or adopted rule to the Committee. The Committee must study a proposed rule, determine the subject matter of a proposed or adopted rule, and refer the proposed or adopted rule to the rule review committee having jurisdiction over its subject matter. (Secs. 101.351(A)(1) and 101.352(A)(1).)

When the original or revised version of a proposed rule, or an adopted rule, is returned by a rule review committee *for want of jurisdiction*, the chairperson of the Rule Review Coordinating Committee must present the proposed or adopted rule to the Committee. The Committee must study the rule review committee's explanation of want of jurisdiction, redetermine the subject matter of the proposed or adopted rule, and rerefer the proposed or adopted rule to the rule review

committee having jurisdiction over its subject matter. (Secs. 101.351(A)(2) and 101.352(A)(2).)

When the original or a revised version of a proposed rule is referred or rereferred to a rule review committee, the chairperson of the Rule Review Coordinating Committee must deliver six copies of the proposed rule, together with six copies of its accompanying rule summary and fiscal analysis, to the chairperson of the rule review committee. When an adopted rule is referred or rereferred to a rule review committee, the chairperson of the Rule Review Coordinating Committee must deliver six copies of the adopted rule to the chairperson of the rule review committee. (Secs. 101.351(B) and 101.352(B).)

The chairperson of the Rule Review Coordinating Committee must maintain a record of the filing, referral, return, and rereferral of original and revised versions of proposed rules, and adopted rules (secs. 101.351(C) and 101.352(C)).

Review of a proposed or an adopted rule by a rule review committee

Under the bill, when the *original or a revised version of a proposed rule* is referred to a rule review committee, the chairperson of the committee must present the proposed rule, and its accompanying rule summary and fiscal analysis, to the rule review committee. If the referral is of the original version of a proposed rule, or of the revised version of a proposed rule the previous version of which the rule review committee did not exercise jurisdiction over, the committee first is required to study the proposed rule to determine whether or not it has jurisdiction over the rule's subject matter. If the rule review committee determines that it has jurisdiction, the committee must proceed to review the proposed rule for "legislative review and invalidation," and its accompanying rule summary and fiscal analysis to determine whether it is accurate and complete. If the rule review committee determines that it does not have jurisdiction, it must prepare and adopt a written explanation of why it does not have jurisdiction. (Sec. 101.353(A)(1).)

If the referral is of a revised version of a proposed rule, the previous version of which the rule review committee exercised jurisdiction over, the rule review committee must proceed to review the proposed rule and its accompanying rule summary and fiscal analysis as described above (sec. 101.353(A)(2)).

When an *adopted rule* is referred to a rule review committee, if the committee exercised jurisdiction over the latest version of the adopted rule while it was still in proposed form, the chairperson of the committee must proceed with review by comparing the rule as filed in final form with the latest version of the same rule as filed in proposed form. If the rule review committee did not exercise

jurisdiction over the latest version of the adopted rule while it was still in proposed form, the chairperson of the committee must present the adopted rule to the committee. The committee must study the adopted rule to determine whether or not the committee has jurisdiction over its subject matter. If the committee determines it has jurisdiction, the chairperson of the committee must proceed with review by comparing the rule as filed in final form with the latest version of the same rule as filed in proposed form. If the committee determines that it does not have jurisdiction, the committee must prepare and adopt a written explanation of why it does not have jurisdiction. (Sec. 101.354(A).)

When a rule review committee determines that it does not have jurisdiction over the original or a revised version of a proposed rule or over an adopted rule, the chairperson of the rule review committee must return six copies of the proposed rule and rule summary and fiscal analysis, or of the adopted rule, together with the explanation of want of jurisdiction, to the chairperson of the Rule Review Coordinating Committee (secs. 101.353(B) and 101.354(B)).

The chairperson of a rule review committee must maintain a record of the referral, jurisdictional determination, return, review, and disposition of original and revised versions of proposed rules, and adopted rules (secs. 101.353(C) and 101.354(C)).

Cyclic review of rules

Under law continued by the bill, each state agency is required to assign a review date for each of its rules subject to legislative review. A rule is reviewed to determine whether it should be continued, amended, or rescinded, taking into consideration the purpose, scope, and intent of the statute under which it was adopted; whether it needs amendment or rescission to give more flexibility at the local level or to eliminate unnecessary paperwork; or whether it duplicates, overlaps with, or conflicts with other rules. (Secs. 111.15(B) and 119.032.)

For a § 111.15 rule, the bill continues the law that requires an agency to assign a review date to the rule that is not later than five years after its effective date. If no review date is assigned, the review date is five years after the rule's effective date. (Sec. 111.15(B).)

For Chapter 119. rules, the bill eliminates an outdated provision that requires an agency, within 180 days of September 26, 1996, to assign review dates so that one-fifth of its rules are scheduled for review during each calendar year of a five-year period and to provide to JCARR a list of the rules that it has determined are excluded from this cyclical review. The bill retains as the "review date" the date assigned to a rule by an agency or the former JCARR and adds as a review

date the date assigned to a rule by an agency or implied under § 111.15 or other existing law. (Sec. 119.032(A)(2); repealed sec. 119.032(B).)

The bill requires that at least 90 days before the designated review date of a rule, if an agency has determined that a rule does not need to be amended or rescinded, it must provide the rule review committee having jurisdiction over the rule's subject matter with a notice indicating that the agency has reviewed the rule. The rule review committee then must review the rule under the existing procedure, rather than JCARR performing the review function. To recommend adoption of a concurrent resolution invalidating a rule, the rule review committee must have the vote of four members, rather than the two-thirds vote of members presently required for JCARR. (Sec. 119.032(C).)

Filing of emergency rules

Under existing law, an emergency rule, amendment, or rescission, and determinations of the Board of Tax Appeals regarding unreasonable rules, must be filed with JCARR. The bill provides that emergency rules, amendments, or rescissions or Board determinations required to be filed with JCARR instead must be filed with the chairperson of the Rule Review Coordinating Committee, who, for informational purposes, must transmit a copy of an emergency rule, amendment, or rescission or the determination to the chairperson of the rule review committee having jurisdiction over the rule's, amendment's, or rescission's subject matter or over the subject matter of the rule that is the subject of the determination. (Secs. 111.15(B)(2), 119.03(F), 5117.02, and 5703.14(C).)

Changes made to reflect the elimination of JCARR and the creation of rule review committees

Conforming changes in general

The bill makes various changes to reflect the elimination of JCARR and the creation of rule review committees and the Rule Review Coordinating Committee to assume JCARR's duties. The bill also amends the law to require that six, instead of two (as in the case of JCARR), certified copies of a proposed or adopted § 111.15 or Chapter 119. rule must be filed with the chairperson of the Rule Review Coordinating Committee. In addition, any comments regarding proposed rules likely to affect small businesses and organizations must be submitted to the agency involved or the rule review committee having jurisdiction over the subject matter of the proposed rule. (Secs. 111.15, 117.20, 119.03(H), 119.031, 119.04, 121.24, 121.39, 122.08, 127.18, 145.09, 742.10, 3307.04, 3309.04, 3702.12, 3737.88, 3746.04, 4141.14, 5501.20, 5505.04, 5703.14, and 5902.02.)

Environmental rules

Prior to adopting a rule that deals with environmental protection or an amendment to such a rule, the rule or amendment and other information or documentation must be filed with the chairperson of the Rule Review Coordinating Committee, instead of, as under existing law, JCARR. The bill provides that, when the original or a revised version of the proposed environmental rule or amendment is referred to a rule review committee, the chairperson of the Rule Review Coordinating Committee must transmit the information or documentation to the chairperson of the rule review committee at the same time as the proposed rule or amendment and its accompanying rule summary and fiscal analysis are delivered to that chairperson. (Sec. 121.39.) A similar requirement is made in the bill for the chairperson of the Rule Review Coordinating Committee to transmit to the chairperson of a rule review committee one copy of a determination of the Board of Tax Appeals regarding the unreasonableness of a rule (sec. 5703.14).

Fire Marshal rules

The bill removes an outdated provision requiring that the Fire Marshal file certain rules not later than July 11, 1990 (sec. 3737.88(A)(2)).

HISTORY

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Introduced	03-02-99	p. 154

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