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RATIONAL ACTORS AND ADMINISTRATIVE RULES: LEGISLATIVE VETO IN THE STATE OF MICHIGAN, 1972-1984

Michigan State University PH.D. 1986

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RATIONAL ACTORS AND ADMINISTRATIVE RULES:

LEGISLATIVE VETO IN THE STATE OF MICHIGAN, 1972-1984

By

Gaye Gilbert Benson

A DISSERTATION

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ABSTRACT

RATIONAL ACTORS AND ADMINISTRATIVE RULES:
LEGISLATIVE VETO IN THE STATE OF MICHIGAN, 1972-1984

By

Gaye Gilbert Benson

The legislative oversight literature posits two models. The "runaway" model says legislators lack incentives to provide adequate oversight of bureaucrats. The "capture" model says adequate oversight already exists, and more overt oversight would be counterproductive. Empirically it is difficult to distinguish between the two; each predicts close to 100% success for administrative proposals referred to the legislature. This research poses a third, "constrained", model in which overt institutional oversight mechanisms attract substantial legislator commitment, significantly lowering approval rates.

Each model is tested against the 1972-1984 experience of Michigan, which has the U.S.'s most extensive and severe legislative review of administrative rule promulgation. Key data include 1,906 proposed Administrative Code changes reviewed by Michigan's Joint Committee on Administrative Rules (JCAR), meeting observations, interviews, and decision rules changes, including form of the legislative veto.

Overt oversight stringency increased throughout the study period. More stringent mechanisms—type veto rule, majority requirements, review period duration—were uniformly associated with reduced approvals, eventually less than 70%. Review authority was centralized in and the

almost exclusive authority of the JCAR which attracted high seniority legislators. Bureaucratic strategic behavior helped but did not guarantee success. Most previously withdrawn or disapproved rules were eventually approved in some form; adjusted approval rates exceeded 90%.

Economic groups are regular review process participants with others also quite visible. The process affords the public a final chance to influence administrative policy in a political arena perhaps more sensitive to their concerns. The committee frequently required the resolution of conflicts prior to taking action. Participants are forced to reach self-determined compromise which legislators then endorse, thereby minimizing electoral risks.

Neither the "runaway" nor the "capture" theory fit the findings. Michigan's increasingly centralized and substantive oversight structure resulted in high levels of personal investment, greater legislative control over the promulgation of administrative rules, lower approval rates, and more "constrained" bureaucrats.

To the memory of my grandparents—

I. McF. G. and E. H. G.,

M. A. P. and P. W. P.,

and to my parents—

M. P. G. and A. R. G.,

for their commitment to learning and the sharing of it.

Acknowledgements

The work presented in this dissertation reflects the concern, support, and interest of many people. It is only proper that they be given recognition.

First, my thanks to Dr. Gary J. Miller, who chaired my dissertation committee and served as a member of my program guidance committee, and from whom I had the pleasure of taking two classes. Having come to the doctoral program from outside the discipline, it was my special good fortune to have Professor Miller introduce me to the world of public administration as a subject of academic attention. I was soon captured by a field I had presumed to be dry and of little personal interest. As a member of my guidance committee, he helped shape a substantial, dynamic program for me. As for the dissertation, he introduced me to the topic as something which cut across my various interests and one I might like to work on. It took only a small amount of preliminary research to convince me the topic was feasible as a dissertation, personally interesting, and important. The work which followed was enriched by his insight, patience, encouragement, and good humor. There is no amount of thanks which could repay him; I can only hope that my own relationships with students will be a credit to his good example.

Second, my gratitude to all those persons in government and outside

who shared so willingly their time, expertise, and experience. Special thanks are due Representative Michael J. Griffin, who headed the Joint Committee on Administrative Rules during the time I was interviewing and attending hearings. His unfailing courtesy and cooperation were invaluable; without them this would have been a very different work, if even possible. Members of the joint committee staff, at that time special counsels Kenneth Sanders and Carol Smith and administrative assistant Conney Klingbeil, also played a special role. Their active interest and cooperation and Conney's excellent records, including the "Daily Status Report", were critical components of the project. Thanks also to Senator Ed Fredricks, alternate chairperson during the time I was doing my work and now head of the committee, and all the other current and former members of the Joint Committee who shared their time with me. They all are, indeed, public servants, though they differ in their definitions of both the public and the best way to serve it. Seeing the world from their multiple perspectives was a fascinating experience and I thank them for making it possible. Likewise, my encounters and extended discussions with other actors—bureaucrats and interested members of the public alike—expanded my understanding of the frustrations, rewards, and excitement of trying to make government work. The cooperation of these people broadened my approach and enriched the results; my thanks to each of them.

Four other members of the Michigan State University faculty made special contributions to this dissertation. First is Dr. Ada Finifter, who chaired my program guidance committee and from whom I took classes in voting behavior and political socialization. The research

requirements of those courses especially and her meticulous attention to detail helped prepare me for the dissertation. She helped me think of myself as a researcher, to identify interesting questions, and to pursue them carefully and honestly. For all of these things I am grateful, as well as her general support and continuing interest in my progress. Second, I would like to express my appreciation to Mrs. Jack Knott, Charles Press, and Joseph Schlesinger, members of my dissertation committee. Dr. Knott was especially helping in clarifying underlying theoretical issues particularly in the early stages of the work. Drs. Press and Schlesinger on the other hand, veteran observers of (and sometime participants in) the Michigan political scene, helped me greatly in understanding this specific oversight environment. All were generous with their time and I thank them.

I entered the doctoral program never having seen a computer. With the assistance of Harriet Zhanak, head of the MSU Politometrics Laboratory, and her staff, I learned how to turn one on, worked my way through simple stat assignments and eventually an econometrics course, and ultimately learned four word processing systems. I now know the pleasure of working through a computing problem until I master it. Thanks, Harriet, for a very special gift. Other support from the university included a small scholarship, many quarters as a graduate assistant, and computer support for this work. Even more important, every course I took captured my interest and proved worthwhile. I am grateful to all who were a part of that learning experience.

Several graduate student friends were particularly important to

this project. Thanks to Diane Wall, for making me a part of doing her dissertation, good preparation for thinking through certain problems in writing my own; to Lana Stein, for discussions of interpretation and stats plus words of encouragement at crucial moments; to Suzanne Morris, for her general good sense and constant support; and finally, to Leo Kennedy, who also happens to be a longtime Michigan resident and an employee of Michigan's Legislative Service Bureau and was more than once a source of quick information. To them and the rest of the gang, my warm appreciation.

Now at long last the work is done and energies can be redirected. A very special thank you goes to my family. Life would have been much easier and undoubtedly more pleasant for them, at least in the short run, had I not been involved in this sometimes seemingly never ending project. My daughter, Marsha, spent most of her elementary school years with me in school and saw very little of me in the summer before going to junior high thanks to the big push preparing for the dissertation defense. My husband, Al, took early retirement from Michigan's Department of Labor, then had to wait around for me to finish up so we could head for a warmer climate and play outdoor tennis year round. They both were supportive beyond expectation or hope. An appropriate reward will be hard to find.

I have, despite all the normal ups and downs, enjoyed doing the dissertation. The topic sustained my interest through to the very end, I had the support of a responsible and active committee, and the encouragement of friends and family. Much of what has been accomplished is to their credit; the shortcomings remain my responsibility.

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Chapter 1

Introduction and Literature Review

The research documented in this dissertation focuses on a particular point of intersection between the legislative and executive branches—the legislative oversight of administrative rulemaking. It examines incentives for, dynamics of, participation in, and the outcomes of rule oversight, using data from Michigan, the state which currently practices the most ambitious form of legislative oversight in the country. Special attention is given to the effects of two different forms of the legislative veto, the "negative" form, requiring negative action by the legislature to deny approval of a legislative rule, and the "reverse" form, where no rule takes effect without prior legislative approval.

Three theories of legislative oversight are evaluated. The first two—"legislative capture" and "runaway bureaucracy"—the major competing theories within current academic literature regarding oversight incentives and implementation, offer contradictory and apparently irresolvably different explanations for what is seen as limited oversight. The third theory, that of the "constrained bureaucrat", is derived from observations of current oversight practice particularly at the state level, practice which has resulted in

strengthened state oversight mechanisms. The study takes us beyond the confines of the congressional model under which most oversight study has been done to a setting characterized by substantive legislative veto authority, centralized and comprehensive systematic review, and a series of increasingly more stringent decision rules which provide for the relatively controlled analysis of the effects of differing structural mechanisms.

1.1 Introduction

Governments, from their inception, have promulgated rules and regulations. Varying in subject, stringency, method, goal, and success, the existence of government rules and regulations nonetheless has been one of the certitudes of life.

American political theory says the legislatures set major policy but, under the doctrine of delegated powers, that they may delegate authority to executive branch administrators to develop the details required for implementation. Consequently, rulemaking and rule implementation have become primary functions of governmental bureaucracies in this nation.

At the federal level, bureaucrats decide such things as conditions for the conduct of interstate commerce, allowable levels of certain air or water pollutants, and standards for reimbursement for Medicare service providers. At the state level, similar types of regulation occur as well as regulation in areas which are almost exclusively in the

states' province, especially the regulation of professions. In the state case which will be examined here, bureaucrats develop standards in many different policy areas—for the regulation of commerce (e.g., commercial fishing, real estate schools, horse racing, and consumer protection rules) and environmental and public health (air pollution control, disposal of diseased animals, elevator safety, fire fighting, and electrical code rules), control of the political process itself (mechanics of campaign finance reporting), and, as suggested, the regulation of professions (pharmacists, social workers, and nursing home administrators.) (See Appendix A for a sequential listing of new Michigan rules transmittals, including the above examples, during a typical twelve-month period.)

The doctrine of delegated powers, however, implies a continuing legislative responsibility for rules developed within the executive branch; thus, legislatures are looked to as the overseers of administrative activity in this and other areas. While growth of the administrative state in the latter twentieth century may have theoretically increased the importance of such oversight, academic analysis of oversight incentives, mechanisms, and efficacy has been limited. At this point, the literature offers two contradictory perspectives on these issues—bureaucracies are characterized as either "runaway" or, alternatively, "captured."

<u>"Runaway" bureaucracy.</u> The traditional view holds that legislative oversight is much lauded but little practiced. Legislator-constituent incentive structures focus on other aspects of legislative responsibility, leaving little motivation for investment of personal or institutional resources in the oversight function. Conventional

oversight mechanisms—appropriations, program audits, and investigatory hearings, for example—are believed to be cumbersome, sporadic, and largely ineffectual. Bureaucrats are left to pursue their own goals, essentially unchecked by their supposed legislative overseers. The result is the often discussed "runaway" bureaucracy and little hope for change.[1]

"Captured" bureaucracy. A more recent model, growing out of the rational choice perspective, asserts that a highly effective system of legislative oversight is already in place. Program approval and appropriations sanctions operating through the standing committees keep administrative agencies in line. Far from being runaways out of legislative control, bureaucrats in this model act so as to provide electoral benefits to their legislative overseers, who in turn, supply the resources for continuing agency existence. In this view, the "captured" bureaucrats are already doing what legislators want; more overt oversight would be redundant and counter-productive.[2]

This dissertation presents a course of research aimed at helping resolve the dilemma of these two competing and contradictory theories.

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1. See David R. Mayhew, Congress: The Electoral Connection (New Haven: Yale University Press, 1974), pp.120-125; Morris S. Ogul, Congress Oversees the Bureaucracy (Pittsburgh: University of Pittsburgh Press, 1976), pp.181-182; Alan Rosenthal, "Legislative Behavior and Legislative Oversight," Legislative Studies Quarterly 6 (February, 1981): 115-116; Seymour Scher, "Conditions for Legislative Control," Journal of Politics 25(1963): 531.

2. See Morris S. Ogul, "Congressional Oversight: Structures and Incentives," in Congress Reconsidered, Lawrence C. Dodd and Bruce Oppenheimer, eds., (New York: Praeger Publishers, 1977) pp.212-222; and Barry Weingast and Mark J. Moran, "The Myth of the Runaway Bureaucracy: The Case of the FTC", St. Louis: Washington University Center for the Study of American Business, Formal Publication No. 49, 1982.

It does so, in part, by proposing yet a third theory—that of the "constrained" bureaucracy, to be introduced in the next section.

1.2 The Research Problem

The legislative veto of administrative rules represents a particularly interesting nexus in the legislative-administrative relationship. It allows direct legislative intervention in a delegated administrative function.[3] Yet it has received relatively little systematic academic attention outside of the law journals.[4] If, in fact, the legislative veto represents a notable point of influence over administrative decision making, we need to better understand the

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3. It has been argued that: "The legislative veto can be viewed as a mechanism to help fill the void left by the decline of the delegation doctrine," i.e., the increasing tendency of Congress to delegate authority without clearly specifying accompanying policy standards. See Harold H. Bruff and Ernest Gellhorn, "Congressional Control of Administrative Regulations: A Study of Legislative Vetoes," Harvard Law Review 90 (1977), pp.1372-73.

4. The bulk of the literature, most of it in law journals, has focused on normative issues—whether the legislative veto is constitutional, represents an undue intrusion of the legislature into administrative prerogatives, etc.—or presents basically atheoretical accounts of this or other control devices. See, for instance, Bolton (1977), Kaiser (1980), Schwartz (1978), and Watson (1975). Standard texts in the field typically devote a few paragraphs at most to the legislative veto (e.g., Randall B. Ripley and Grace A. Franklin, Congress, the Bureaucracy, and Public Policy, Homewood, IL: The Dorsey Press, 1980, pp.74-75, and, at the state level, Charles Press and Kenneth VerBurg, State and Community Governments in the Federal System, 2nd edition, New York: John Wiley & Sons, pp.241-242, 365-366.) A few empirical studies have appeared in the last few years, generally in the political science literature, and will be discussed later in this chapter.

dynamics surrounding it and its substantive effects. Alternatively, if it represents a point of system redundancy or a counter-productive investment of legislative resources, we need to understand the incentives which support such an arrangement and the consequences of such a structure.

At least two factors contribute to the failure to resolve the fundamental contradictions between the models outlined in the previous section. First, much of the discussion has been from an institutional perspective, centering on issues regarding the constitutionally appropriate roles of the respective branches in this particular relationship.[5] Even the much discussed 1983 Supreme Court INS vs. Chadha decision which invalidated most requirements of prior Congressional review or approval of federal level administrative rules and regulations was decided on formalistic, institutional grounds, left unaddressed the behavioral and theoretical conflict identified here.[6] Its main findings were that Congressional review as it then operated violated two fundamental principles. First, it violated the requirements of legislative action by allowing a single house to sometimes exercise the (legislative) veto authority alone. Second, the legislative act of veto was never subsequently referred to the president for signature or executive veto; this lack of presentment, the Court found, violated rights of executive participation in the legislative process. This decision, while indeed addressing federal constitutional

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5. Bolton, 1977; Kaiser, 1980; Schwartz, 1978; Watson, 1975.

6. See Immigration and Naturalization Service v. Chadha 103 SC 2764, U.S. Supreme Court, 1983.

and formalistic, institutional, issues gave us no further understanding of the empirical merits of different approaches. It told us nothing about the success of the veto as it had operated nor what the consequences might be of removing the tool. Moreover, it had no direct bearing on legislative oversight at the state level where individual state constitutions determined the appropriate relationships between the branches.

Second, even without the problem of the general institutional focus, there remains a serious problem in identifying either model in operation. Both models would lead us to predict administrative rule approval rates approaching 100%. In the first case, there is no effective control over the "runaway" bureaucrats and they do as they wish; in the second, bureaucrats act in anticipation of legislator wishes and provide the rules preferred by their overseers. Because of this, as Weingast notes, an effective standing committee oversight system will be difficult to distinguish in process from an ineffective one. If committee-based oversight works well and "require[s] the attention of Congress only when something goes wrong . . . then congressional 'oversight' will <u>appear</u> sporadic, ad hoc, and without systematic influence".[7]

The empirical problem may be related to the limitations of a restricted data base. Empirical studies to date have focused almost

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7. Barry R. Weingast. "A Principal Agent Perspective on Congressional-Bureaucratic Relations (with Empirical Applications to the SEC's recent deregulation of the New York Stock Exchange)," paper prepared for delivery at the Fifth Carnegie Conference on Political Economy, Pittsburgh, Pennsylvania, June 10-11, 1983, p.10. Emphasis mine.

exclusively on federal level institutional structures and relationships. Yet throughout the 1970s, state requirements for the legislative review of rules were increasingly common, either on a statute-by-statute basis or through establishment of procedures for routine review but the states had not limited themselves to the Congressional model.[8]

By 1982, forty-one states provided for some form of direct legislative oversight of administrative rule making.[9] Of these, twelve states used a procedure which also required gubernatorial involvement while thirteen allowed disapproval of an administrative rule if sustained by both houses. One state (Oklahoma) allowed disapproval by one house only and six provided for disapproval by review committee(s)

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8. For reviews of past and current state practices concerning legislative oversight of administrative rules see Keith E. Hamm and Roby D. Robertson, "Factors Influencing the Adoption of New Methods of Legislative Oversight in the U.S. States," Legislative Studies Quarterly VI:1 (February, 1981):135-138; Rich Jones, "Legislative Review of Administrative Rules: An Update," State Legislative Report--Legislative Management Series 7:4 (April, 1982) (Denver:National Council of State Legislatures); R. Bradley Lambert, "Comment—The Legislative Veto: A Survey, Constitutional Analysis, and Empirical Study of its Effects in Michigan," Wayne Law Review 29 (Fall, 1982):92-95; David S. Neslin, "Quis Custodiet Ipsos Custodes?:* Gubernatorial and Legislative Review of Agency Rulemaking under the 1981 Model Act," Washington Law Review 57 (1982):672-675; and Bernard Schwartz, "The Legislative Veto and the Constitution—A Reexamination," George Washington Law Review 46 (March, 1978):354-364.

9. According to Jones (1982), the states without specific provisions for legislative review of administrative rules included California, Delaware, Indiana, Massachusetts, Mississippi, New Mexico, Pennsylvania, Rhode Island, and Utah.

action alone. One state (Michigan) required prior approval of all rules by a joint review committee with no action by the full legislature.[10]

Moreover, of those forty-one states, twenty-five conducted initial review by special joint committees only. An additional four states used standing committees during legislative sessions and joint committees during the interims. In one state (Hawaii) the Legislative Auditor conducted initial, systematic review; standing committees might then give further consideration to questioned rules. Nine states used conventional standing committees only and one (Maine) used joint standing committees. Thus, 73% of those states practicing legislative oversight and 62% of all states diverged from the congressional model in the location of the review function.

This expansion at the state level would not have been predicted by either of the major theories—neither by the "runaway" model, where the assumption is that incentives for such investments are lacking, nor by the "captured" model, because additional oversight mechanisms are presumed unnecessary and counterproductive. Neither would they readily account for the states' choice of specialized rather than standing

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10. Data in this and then next paragraph are extracted from Jones, 1982. [See text, and second table (unnumbered).] They differ from Hamm and Robertson (1981, p.137; data as of December, 1979) whose figures are, respectively: 34 states in all, and 11, 6, 1, 4, 1 in the individual categories. Five states listed by Hamm and Robertson as having no systematic or formal review subsequently passed review laws. (States included Alabama, Hawaii, New Jersey, North Dakota, Virginia and Washington. See Jones, p. 1.) Two other states (Arizona and New Hampshire) which give their legislatures only limited power in this regard are counted differently by the two sources. Other differences may be the result of additional statutory changes between the dates of the two surveys or artifacts of different aggregation rules. Of particular interest here, however, is the agreement regarding Michigan's place on the scale—the most extreme rule in both reports.

committee oversight. Incorporating state data would substantially increase the range of variation compared to that observable in the Congressional setting. This factor alone could lead to significantly different interpretations of the dynamics of the oversight environment.

A third model—"constrained" bureaucracy. State actions in adopting these new oversight measures seem based on a model of legislative-bureaucratic relationships which differs significantly from either of the models presented above. Bureaucrats are seen as less responsive to legislative wishes than desired, as acting on the basis of something other than legislator goals and benefits. This agrees with the "runaway" model and contradicts the "captured" model. On the other hand, state legislative action appears to support the view that greater control over bureaucrats is both desireable—now conflicting with the "captured" model—and feasible—disagreeing with the "runaway" model. Further, it is possible to devise oversight mechanisms which will justify and attract personal and institutional investments sufficient to accomplish the goal of greater control. These observations on state-level practice lead me to propose a third model of legislative-bureaucratic relationships—the "constrained" bureaucracy model. Table 1.1 summarizes the key assumptions of this and the other two models.

Table 1.1. Effectiveness and Feasibility of Legislative Oversight of Bureaucratic Activity: Key Assumptions of Three Models—"Runaway", "Captured", and "Constrained".

Key Assumptions Regarding. . .	Model of Legislative Oversight by Characterization of Bureaucracy		
	Runaway	Captured	Constrained
Bureaucratic goals	own	legislators'	own
More overt/direct legislative oversight	ineffectual	counter-productive	desireable
Legisl. incentives/ structure for more oversight	lacking	lacking	feasible

Clearly, no two of these models can be correct. Whether any one is successful in uniquely explaining, let alone predicting behavior remains a matter to be submitted to analysis.

1.3 The Michigan Case

The research reported here uses Michigan's experience in one area of legislative oversight—oversight of administrative rules over a thirteen year period beginning in 1972—to evaluate the three models previously discussed. Three factors make the Michigan experience especially suitable for such analysis.

First, Michigan has the longest of the state histories of legislative supervision of administrative rulemaking. Explicit authority for legislative review dates from 1947. Systematic review of

all rules began in 1972; approximately 150 rules transmittals annually have been reviewed since then. This provides a substantial data base with which to work, not the case in all states.

Second, since 1947, Michigan has employed a review structure different from that chosen by Congress. Congressional review of rules has been located within the standing committees, both authorization and appropriations. In Michigan, review was assigned from the beginning at least part of the time to a joint committee—the Joint Committee on Administrative Rules (JCAR).[11] Since 1964, the JCAR has been given the full review responsibility; authorization and appropriations committees have been removed completely from the normal review process. As demonstrated, this location of the review process is similar to that in most of the states with legislative review, and formally divorces review from the structure and sanctions of the oversight mechanisms operative in the Congressional environment. The resulting concentration and specialization may create incentive structures and dynamics different from those in the Congressional setting from which most current theory was developed.

Finally, over its nearly forty-year history of legislative review of administrative rules, Michigan has changed the process and its decision rules several times. In each case the result was increased

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11. The committee was variously known as the Interim Committee, Legislative Committee, Statutory Committee, or Joint Committee on Administrative Rules in the early years, but since 1958 has most frequently been and is now called the "joint committee". To avoid confusion, the committee will always be identified in this paper as the Joint Committee—the JCAR.

stringency of oversight. A recently developing literature deals with the relationship between institutional factors and oversight incentives.[12] Michigan's internal changes facilitate the relatively controlled investigation of such relationships.

The history of legislative review of administrative rules in Michigan can appropriately be broken into three major periods. The first, extending from 1947-1971 and preceding systematic review, will be termed the complaint period. It is reviewed briefly here simply to give some sense of the developments which led to current practice. The second major phase, from 1972-1977, begins with the first year of systematic review of all newly proposed administrative rules. It includes subsequent years during which rules took effect unless the legislature confirmed the negative action of the review committee. It will be termed the negative veto period. Beginning in 1978, the decision rule was reversed. New rules could not take effect without winning the prior affirmative vote of the reviewing committee. Years from 1979 on will be included in the reverse veto period. This dissertation focuses on the latter two periods.

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12. See, for instance, William Lyons and Larry W. Thomas, "Oversight in State Legislatures: Structural-Attitudinal Interactions," American Politics Quarterly 10:1 (January, 1982), pp.117-133; Gary J. Miller, "Bureaucratic Compliance as a Game on the Unit Square," Public Choice 29 (1977):37-51; Gary J. Miller and Terry M. Moe, "Bureaucrats, Legislators, and the Size of Government," American Political Science Review 77 (June, 1983):297-322; and Alan Rosenthal, "Legislative Behavior and Legislative Oversight," Legislative Studies Quarterly VI:1 (February, 1981), pp.115-131.

Complaint period: 1947-1971. During this period, administrative agencies promulgated rules[13] without any prior legislative review. To the degree that rules received legislative consideration, it was after they had taken effect. Legislative action was usually based on specific complaint; there was no systematic committee review.

The Michigan legislature established the state's first administrative code through a 1943 act which called for the first time for all state administrative rules and regulations then in effect to be compiled and published.[14] Two years later, in 1945, it attempted to create for itself a powerful role in the promulgation of changes or additions to the code—it passed a bill requiring prior legislative approval of most administrative rules and regulations.[15] Governor Harry F. Kelly successfully vetoed the measure.

In 1947, the legislature was more successful, if less radical. It passed legislation requiring all newly promulgated rules to be transmitted to the legislature, where they would be referred to the appropriate standing committees.[16] (Although not consulted in advance of the promulgation of rules, they would, presumably, at least be

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13. Michigan has typically used the term "rules" for what are frequently referred to by other states and the federal government as "regulations" or "rules and regulations." The term "rules" will be given precedence in this discussion, in keeping with Michigan general usage.

14. "Administrative Code Act", Michigan 1943 PA 88.

15. Michigan 1945 Senate Enrolled Act No. 69 (S.B. #123).

16. Michigan 1947 PA 35.

informed.) The legislature could, by concurrent resolution and without gubernatorial presentment, overturn any such rule.[17] Moreover, during the interims between sessions of the state's part-time legislature, rules were to be transmitted to a joint committee on administrative rules. This committee was empowered to meet between sessions and suspend rules until the legislature next met. This established a mechanism to control at least one administrative strategy—promulgating rules when the legislature was not in session—which might otherwise allow circumvention of oversight. Michigan now had a legislative committee whose sole responsibility was the review of administrative rules and the evaluation of their conformity to authorizing statutes.

Two significant statutory increases in the committee's powers occurred during this early period. In 1951, the JCAR was granted substantive veto authority.[18] Rules suspended by the committee remained suspended unless reinstated by the JCAR or approved by concurrent resolution of the legislature. Committee votes during the interim to suspend a rule no longer required confirming legislative action to remain in effect. The legislature further strengthened the committee in 1964, authorizing it to meet year round and receive all newly promulgated administrative rules.[19] This meant that all remaining review responsibility had been transferred out of standing committees and vested in the Joint Committee on Administrative Rules. This

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17. Prior to 1947, binding legislative action against administrative rules would have required the regular legislative process, including presentment to the governor.

18. Michigan 1951 PA 9, at 24.78e.

19. Michigan 1964 PA 161.

increasing centralization and enhancement of the review function during this period had several notable aspects.

First, the increased empowerment of the joint committee represented a substantial and almost unprecedented legislative deference to committee judgement. Prior to 1951, the JCAR's power was formally that of most other committees, i.e., advisory. The 1951 amendment, however, gave the committee substantive authority which carried over even after the legislature was back in session. This let the legislature exercise a substantial review function while minimizing the amount of detail with which the total body had to deal.

Second, the eventual centralization of review in a single committee signaled and furthered the development of a new kind of expertise in the legislature—an expertise in the administrative rules, their promulgation and application. Standing committees would concentrate on legislation; the joint committee, on the administrative rules necessary to fulfill the intent of the law. The committee's expertise cut across previous divisions of authority within the legislature, including virtually all the traditional subject matter jurisdictions, but concentrated on an area which otherwise received very little legislative attention.

The new division of labor recognized that the key interest of most legislators was legislation, but also manifested the legislature's increasing seriousness about exercising the right of oversight. It allowed a small group of legislators to begin to see administrative rules as something more than isolated phenomena and to react to them with a broader understanding of their place in a system. As early as 1959, the JCAR was calling for the development of a uniform system for

"promulgation of rules whether new or amendatory" and a "uniform numbering system to be used by all agencies."[20] By 1969, it was advocating a general reworking of the state's administrative procedures act, including: 1) clear definitions of the terms "rule", "guideline", and "office practice"; 2) spelled out procedures for the making of rules; and, 3) designing future legislation so as to simplify the practice of administrative law.[21]

They were at least partially successful in all three areas but approval of a rule generally still required only certification by the state's Legislative Service Bureau and the attorney general. Unless a complaint was raised, a rule was likely to receive very little legislative attention. The committee had little work to do. The committee chair reviewed recently promulgated rules and decided which the committee as a whole should review. There was an occasional hearing. JCAR members did not have to be particularly diligent, experienced, or well-informed.

"Negative Veto" period: 1972-1977. In a single 1971 legislative act, Michigan's legislative review went from casual to systematic review, greatly increasing the responsibility and role of the Joint Committee on Administrative Rules.[22]

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20. "Report of the Joint Committee on Administrative Rules--1958", State of Michigan, Journal of the Senate, April 15, 1959, pp.452,453.

21. "Report of the Statutory Committee on Administrative Rules for the Year 1968", State of Michigan, Journal of the Senate, March 13, 1969, p.393. The report also notes a survey showing that of 37 public acts accompanied by a mandate to establish administrative rules, compliance was achieved in only 12 cases, "representing a percentage of 32%".

22. Michigan 1971 PA 171.

As before, rules would be certified for form, legality and proper numbering. Beginning in 1972, however, they would then would face a sixty day period during which the JCAR was required specifically to review them and prior to which they could not take effect. This act increased the costs for both the agencies and the legislature. Agencies now had to be prepared to satisfy the legislative committee as well as the attorney general and the legislative service bureau. On the other side, the legislative committee had to adopt procedures which tracked receipt of and action on proposed rules transmitted to it. (The resultant legislative record-keeping provided the basis for the quantitative analyses which follow in later chapters of this work.)

The 1971 act provided for several possible outcomes under the new rules oversight provisions. If the committee did nothing, the rule took effect automatically at the end of the sixty-day waiting period. If the committee voted to approve a rule, it could then take effect once the governor's office had had it for ten days. The committee might also vote to disapprove a rule, but that was not itself a binding action; for disapproval to take effect, the legislature must within 30 days pass a concurrent resolution of disapproval. (In this respect, the amendment, on the face, decreased the committee's power.) The amendment also authorized agencies to withdraw a rule prior to expiration of the sixty day review period. The bottom line, however, is that rules were routinely reviewed but took effect unless the legislature took negative action within the prescribed review periods. For this reason, outcomes under this amendment are characterized as occurring under the "negative veto".

Although the above actions put Michigan far ahead of most other

states in legislative oversight of the rules promulgation process, legislators would find even this unsatisfactory. Committee reports suggest two major areas of concern. The first was the problem of agencies submitting rules "toward the close of session at a time when the Committee would not have an adequate opportunity to review the rules."[23] That, plus "the frustration of trying to get favorable consideration to [concurrent] resolutions disapproving rules caused most Committee members to support [change]."[24] Change there would be, substantial change.

"Reverse Veto" phase: 1978-present. In 1977, the legislature passed an amendment requiring prior legislative approval of all administrative rules. Gov. William G. Milliken vetoed the measure, but contrary to the experience with Governor Kelly thirty-two years earlier, this time the legislature prevailed.[25] By a vote of 30-6 (of 38 serving) in the Senate and 74-5 (of 110 serving) in the House, the governor's veto was overridden. The vote represented the first time in twenty-six years that a gubernatorial veto in the state of Michigan had been overturned, and the only time it would happen in the fourteen years of the Milliken administration. The legislature was, indeed, serious about its role in oversight of the administrative rules process—no future administrative rule nor change to any existing rule would take place without the explicit approval of the legislature of the state of Michigan. This

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23. "Combined Annual Report for 1976, 1977, 1978 of the Joint Committee on Administrative Rules," Joint Committee on Administrative Rules, State of Michigan, p.6.

24. Ibid.

25. Michigan 1977 PA 108.

represented the most stringent legislative oversight decision rule in the country. The process had been reversed from that under the negative rule. Outcomes in this period are described as occurring under the "reverse veto".

Two other changes in the 1977 amendment were particularly important. First, Senate membership on the committee was increased to five (from a previous three), matching the number from the House since 1970. (The implications of this investment of resources will be discussed in Chapter 3.) The interaction of the new veto rule, the added Senate membership, and the concurring majorities rule, now meant that for new rules proposals to take effect, they must secure the affirmative vote of at least three Senators and three Representatives.[26] Three negative votes from either chamber could block approval. Second, the committee could vote to extend the review period from the minimum 60 days to 90 days, thus potentially expanding the scrutiny given a particularly difficult or controversial rule.

Thus, in 1983 when I began observations of the review process, it followed the pattern shown in Figure 1.1. There were four formalized points for public involvement or contact: initiation of a rule, at agency hearings, after agency modifications, and at the time of JCAR consideration. Rules proposals were required to be cleared with the Legislative Service Bureau and Attorney General's office prior to transmittal to the JCAR. Once approved by the JCAR, they could not take effect until ten days after the agency submitted them to the governor's

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26. The requirement of concurring majorities dated from 1969. See Michigan 1969 PA 306, at 24.236.

office. Joint committee and full legislative action followed the lines indicated by the lower left hand portion of the diagram. The reader will note that there was no requirement that the committee submit disapproved rules to the legislature for further action. Only in the case the committee took no action (insufficient votes for either approval or disapproval) was legislative referral mandated. That system continues today.

Michigan—Period Summary. Following Figure 1.1, the diagram of the current rules promulgation process, is Table 1.2. That table summarizes significant characteristics of the review process during each of the three periods. The first period, the complaint period, is offered for historical perspective only; it will be discussed only in passing in the remaining chapters. Details of the other two periods, in contrast, will be discussed at length in the chapters which follow, with a heavy focus on the differing effects of the negative and reverse vetoes.

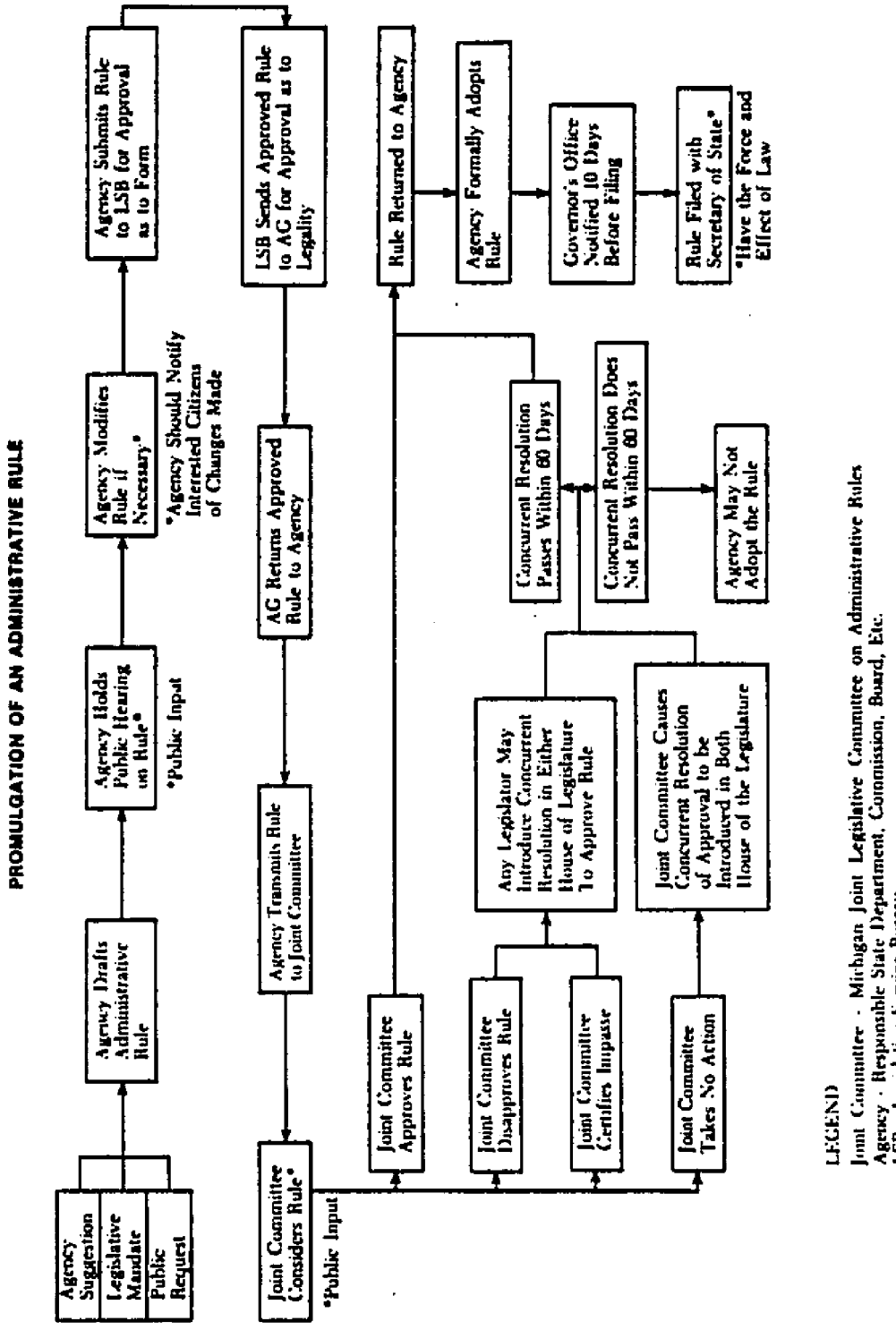

Figure 1.1 Process for Promulgation of an Administrative Rule, State of Michigan: 1978-Present.

(Source: "Processing of Proposed Guidelines and Administrative Rules", Joint Committee on Administrative Rules, Lansing, Michigan, February, 1983, p. 8.)

Table 1.2. Michigan Legislative Review of Administrative Rules--Major Periods and their Characteristics.

Characteristics	Period: Complaint (1947-1971)	Negative Veto (1972-1977)	Reverse Veto (1978-present)
Review basis	complaint	systematic (all)	systematic (all)
Review period (prior to apprv.)	none	60 days	60-90 days
Reviewing body	during interim, JCAR; during session, standing comms. (1947-1964), JCAR (1965-1971)	JCAR	JCAR
Required majority	simple	concurring	concurring
JCAR composition	Senate: 3 House: 3-5	Senate: 3 House: 5	Senate: 5 House: 5
Involvement of full legislature	traditional, during session, 1947-1964; only on JCAR-denied rules, 1965-1971	only on rules denied by JCAR	only on rules on on which JCAR fails to act
Result of JCAR disapproval	rule suspended[a]	refer rule to legis-ture	rule dies unless re-submitted and accepted
If no JCAR action, rule. . .	took effect	took effect	fails unless legislature acts

[a]From 1947-1951, suspension was only until next legislative session. From 1952 on, rule could be reinstated by concurrent legislative resolution, but referral to legislature of suspended rules not mandated.

1.4 Empirical Studies

What does prior research tell us about the circumstances under which overt legislative review of administrative rules, and the legislative veto in particular, are likely to be adopted? What do we know about incentives for participation in oversight? What generalized findings are there regarding the outcomes of legislative oversight activity? A few empirical studies have addressed these issues.

1.4.1 The Larger Setting

Hamm and Robertson[27] found states with divided party control of legislative and executive branches more likely to adopt some form of rule review than states with shared party control. In addition, the legislative veto, the strongest legislative review mechanism, was more likely to be adopted in states where "legislators: (1) are more professional in terms of their low turnover rates, (2) already control a

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27. Keith E. Hamm and Roby D. Robertson, "Factors Influencing the Adoption of New Methods of Legislative Oversight in the U.S. States," Legislative Studies Quarterly VI:1 (February, 1981), pp.133-150. The model was based on five explanatory variables: 1) general legislative capabilities (compensation and membership continuity); 2) existing oversight capabilities (number of appointments over which the legislature has control); 3) size of administrative structure (mean number of full-time employees per 10,000 population, and number of occupations licensed by the state); 4) executive power (a seven-point substantive veto index); and 5) party control (whether divided between the executive and legislative branches).

substantial number of appointments to executive agencies, and (3) face a relatively large bureaucracy, but (4) a weak governor."[28]

Lyons and Thomas' findings (1982) indicate a substantial relationship between oversight structure and individual motivations for participation.[29] They started from the premise that oversight activity is "time consuming, difficult, and less politically rewarding than passing new legislation."[30] Research was conducted in three states—Missouri, Tennessee, and Florida—to assess relationships between oversight structures and patterns of personal participation.[31]

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28. Ibid., p.146. Sunset provisions, in contrast, were more likely to be adopted in states with "low legislative professionalism, little party conflict, and a large administrative structure."

29. William Lyons and Larry W. Thomas, "Oversight in State Legislatures: Structural-Attitudinal Interactions," American Politics Quarterly 10:1 (January, 1982), pp.117-133. The authors obtained data from 183 legislators (response rate of 38%) in Missouri, Tennessee, and Florida regarding their personal participation in oversight activities in four areas: agency personnel matters, agency rule-making processes, agency expenditure of funds (budget process), and review of agency programs. Those data were combined in a four-item index which served as the dependent variable, "oversight activity." The independent variables are lawmakers' own norms regarding the appropriateness of various types of oversight techniques, political party, legislator preceptions of constituency interest in oversight, toward executive independence, and sense of the efficacy of oversight.

30. Ibid., p.119.

31. The three states were chosen for oversight variation in both structure and experience. Florida, which ranked first on a three-factor index of state legislative independence and oversight capability (measured by whether the auditor was legislatively selected, whether the legislature had the capacity to perform periodic program reviews, and whether it undertook periodic evaluations of existing statutes), also had a fairly long history of oversight involvement. Tennessee ranked seventh but had only recently become involved in systematic oversight. Missouri, ranked 49th, practiced no systematic oversight of administrative activity. Florida and Tennessee had similar review processes, but Florida's oversight committees had their own staffs while those in Tennessee relied largely on staff "on loan" from the Comptroller or Secretary of State.

The best predictors of participation varied with the degree and years of institutionalized oversight. In Missouri, under virtually no institutionalized oversight, the only statistically significant predictor of personal level of oversight activity was individual attitude toward the appropriateness of oversight (R^2 = .013.) In Tennessee, where oversight had only recently been institutionalized, the effect of oversight norms doubled,and perceived efficacy of oversight became significant (R^2 = .196.).[32] In Florida, with a longer history of routinized review, predictors of individual legislator oversight activity were attitude toward executive independence, party ID, and perceived constituency interest in oversight (R^2 = .126.)[33] They conclude that

> "As oversight becomes 'routine' it is motivated by different factors. . . . Oversight activity in which review procedures have been institutionalized is similar to other lawmaking functions—motivated by constituency and partisan concerns.[34]

These findings may actually have underestimated the effect of structural incentives. Although the increasing strength of the relationship is apparent, even in Florida the R^2 is still low, as shown above. Their aggregated data offer insight into orientation, attitudes and incentives for legislators across the spectrum of degree and type of oversight activity but may obscure relationships and weaken overall findings regarding the impact of structure and attitudes for those most involved. Committee specialization and a large degree of member

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32. Ibid., p.127.

33. Ibid., p.129.

34. Ibid., pp.129, 117.

self-selection into committees are norms in most American legislative bodies; relationships may be even stronger if we look at legislators who are active oversight participants. Rosenthal's study (1981)[35] takes such an approach, identifying additional characteristics which help explain "whether and why legislative oversight is or is not performed."[36]

Rosenthal argues oversight is an increasingly specialized activity within state legislatures, requiring the awareness and attention of only a few legislators.[37] Given a proper climate, it will be possible to attract a number sufficient to carry out this function. Such a climate includes appropriate legislative: 1) climate (a popular mood of relative conservatism); 2) posture (independence from the executive branch); 3) capacity (more, and more professional, staff); and 4) mission (over half the states now have "special committees or commissions and special staff agencies" with various specific oversight functions and an institutional obligation to perform them).[38]

Legislators responding to these environmental incentives tend to differ from their colleagues. They have a greater desire to learn about and understand policies, programs, and agencies; a desire to improve the

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35. Alan Rosenthal, "Legislative Behavior and Legislative Oversight," Legislative Studies Quarterly VI:1 (February, 1981), pp.115-131. The study was based on interviews with eighty-eight legislators and professional staff members in twelve states (Connecticut, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, Ohio, Oklahoma, and Wisconsin.)

36. Ibid., p.116.

37. Ibid., p.130.

38. Ibid., pp.124-125.

performance of state government ("a civic sense they carry within them"); and regard oversight as an important institutional function. These traits take them beyond the traditional legislative goals of maximizing credit, achieving concrete goals, and avoiding trouble.[39] While Rosenthal characterizes these legislators as relatively "altruistic", engaging in oversight activities may result in "gaining the respect of some colleagues, winning a reputation within special circles, and gratifying one's ego.".[40] Beyond these personal traits, however, lies an additional environmental characteristic. Oversight legislators tend to be in relatively settled and electorally safe positions, and comparatively "secure in their objectives."[41] Individual, institutional, and external environmental characteristics apparently all play parts in determining investment in the oversight function.

Bruff and Gellhorn's five-program case study (1977)[42] examined some of these factors at the federal level, focusing particularly on factors affecting the outcome of review under the legislative veto. They identified three factors which contributed, from the agency perspective,

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39. Ibid., pp.116,130.

40. Ibid., p.130.

41. Ibid., p.121, after Craft.

42. Harold H. Bruff and Ernest Gellhorn, "Congressional Control of Administrative Regulation: A Study of Legislative Vetoes," Harvard Law Review 90 (1977): 1369-1440. The five programs studied were: 1) HEW Basic Educational Opportunity Grants Program; 2) HEW General Education Provisions Act, including general rulemaking, and Title IX; 3) Federal Energy Administration, basic policy; 4) GSA disposition of President Nixon's papers and tapes; and 5) the Federal Election Commission and reform of campaign expenditures.

to successful rules outcomes. Agencies with broad-based constituencies or highly technical rules, presenting rules for programs subject to periodic review, and not threatening the self-interests of government entities, stood in a relatively good negotiating position and were likely to get the rule they wanted.[43]

Bruff and Gellhorn believed the legislative veto has a detrimental effect on rulemaking. Members of Congress and their staff were both overburdened and underprepared relative to administrative personnel in dealing with the complexities of rules. Bruff and Gellhorn argue that limited legislative time and expertise negatively affect "the quality and thoroughness of congressional review."[44] Additionally, legislative review requirements can delay or disrupt programs, with impacts disproportionate to the actual number of days allowed for review. (Not all delay was caused by Congress; they note that agencies sometimes "await[ed] a politically propitious moment" to submit a completed rule.[45]) They are even more concerned that the oversight requirement and environment destroys "the openness of rulemaking" and "violate(s) the ideal of equal access to the . . . process."[46] Some affected parties may lack resources for an additional lobbying step and target; worse yet, they may not even realize it is necessary.

Members of Congress frequently defend their role in rule review as merely assuring agency conformity to statutory authority and purpose but

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43. Ibid., pp.1409-1410.

44. Ibid., p.1414.

45. Ibid., p.1416.

46. Ibid., p.1414.

Bruff and Gellhorn argue that legislators' review decisions are really based on policy considerations.[47] Nonetheless, widespread acceptance of the "statutory conformity" argument means "veto resolutions receive less public visibility and less attention from members of Congress outside the oversight committees than, as policy decisions, they deserve."[48]

Legislative specialization only exacerbates what Bruff and Gellhorn see as the problems of inadequate participation and openness in legislative review. Committee memberships are frequently "stacked" with members favorable to a given agency, "providing considerable potential for the forging of agency-committee alliances[49]. Moreover, since "most of the effective review occurred at the committee or subcommittee level, often focusing on the concerns of a single member"[50] and Congressional review operates through the standing committees, substantive review power is often controlled by the few, and those most likely allied with agency interests.[51] The interaction of these factors lead them to conclude that political accountability was "likely to be attenuated" by the practice of legislative veto.[52]

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47. Ibid., p.1419.

48. Ibid.

49. Ibid., p.1418.

50. Ibid., p.1417.

51. Ibid., p.1420.

52. Ibid., p.1415.

1.4.2 Michigan Studies

Michigan, as noted earlier, has the strongest form of legislative review currently used by legislative bodies in the United States. To date, three studies incorporating the Michigan experience have addressed at least some aspect of the issues raised above. They include Ethridge's work on the substantive impact of greater legislative involvement in policy implementation in three states (including Michigan), Lambert's study of the effects of Michigan's veto rule (and its constitutionality—not reviewed here), and McCarty's investigation of attitudes toward the expanded legislative veto in Michigan.

Ethridge[53], using 1978-1981 data from Michigan, Tennessee, and Wisconsin, sought to establish factors predicting the outcomes of legislative review of administrative rules and to assess the impact of this type of legislative oversight on the regulatory function. In all three states, the more restrictive a rule, the more likely it was to be disapproved.[54] In addition, in Michigan, agency size was a significant predictor of outcomes.[55] On the basis of these two variables, Ethridge

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53. Marcus E. Ethridge, III, "The Legislative Role in Implementation: A Study of Policy Consequences in Three States," University of Wisconsin-Milwaukee, unpublished paper, 1983.

54. Restrictiveness was measured on a four-point scale where 4 = major aspect of private business activity; 3 = minor aspect of private business activity; 2 = regulation of private personal activity; 1 = regulation of government personnel or procedure. See Ethridge, p. 10.

55. This was a dichotomous variable distinguishing between rules proposed by a department and those proposed by a sub-unit such as an independent board or commission. Ethridge interpreted the result as a reflection of differences in sponsoring units' abilities to mobilize "clout" in support of a proposed rule.

successfully predicted 62% of Michigan review outcomes between 1978 and 1981.

Of the 38% of Michigan cases incorrectly predicted, false approvals most frequently were Department of Natural Resources (DNR) cases[56] while occupational licensing boards accounted for the greatest number of false disapprovals. DNR cases during that time usually involved additional levels of regulation; Licensing and Regulation cases were usually intended to restrict entry into a given occupation. Legislative review appeared to create "access opportunities particularly useful to regulated interests . . . ; indeed, the [agency] regulators most likely to have been 'captured' [by interest groups] encountered notably low levels of committee objection."[57] Oversight seemed not to reduce the degree to which the bureaucracy is captured by regulated interests.

Ethridge believes that review decisions are more reflective of "particularistic influences of subsystem politics than of macro-level forces like party and public opinion."[58] As a result, short of "special circumstances making a pro-regulatory stance politically profitable for a chairperson,"[59] committee heads would be unlikely to exert strong regulatory leadership. Such circumstances are apparently not entirely

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56. Ibid., p.15. The Department of Natural Resources submitted more cases than any other department during the time period studied by Ethridge. He does not report number of transmittals nor falsely predicted approvals by department so it is unclear whether the actual number of DNR false approvals is disproportionate compared to other departments.

57. Ibid., pp.15, 18.

58. Ibid., p.21.

59. Ibid., p.20.

lacking, however. He says many restrictive rules proposals were adopted in Michigan during the time period under study, despite a committee he regarded as "significantly anti-regulatory."[60]

Lambert[61] analyzed Michigan review outcomes for 1976-1981, the dynamics of several specific cases, and the degree to which the review process delayed implementation. He found "the Committee's disposition of rules from year to year . . . remarkably consistent"[62]. The fact that agency withdrawal of a rule occurred ten times more frequently than committee disapproval suggested two things, in his view: first, that the committee "prefers indirect action" and second, that agencies are able to predict committee behavior and act defensively. The result is rule modification even though the committee rarely takes direct negative action.[63]

Lambert notes approval rates vary by department; he offers two explanations. Departments frequently submit rules revisions as a group. Success may vary with the type veto under which such major rules packages were processed. In addition, departments vary in the degree to which rules are likely to attract public controversy. He argues, for example, that the Department of Public Health, which promulgated much of its basic regulatory program after the change to the reverse veto, had a lower approval rate than did departments which already had most of their

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60. Ibid., p.20.

61. R. Bradley Lambert, "Comment--The Legislative Veto: A Survey, Constitutional Analysis, and Empirical Study of its Effects in Michigan," Wayne Law Review 29 (Fall, 1982): 91-148.

62. Lambert, p.114-115.

63. Ibid., pp.115-116.

rules in place. Likewise, it had a significant number of controversial areas in which it attempted to promulgate rules, including "nuclear power emergencies, substance abuse programs, disease control, licensing of nursing homes, and the definition of live birth".[64]

Overall, Lambert judged the review process in Michigan an important mechanism in maintaining some legislative control over the exercise of delegated authority. Nevertheless, there were several problems. Echoing the Bruff and Gellhorn concern regarding delay, he argues that the legislative committee sometimes unnecessarily and inappropriately delayed rules implementation; in general, however, the review process operated without undue delay (accounting at most for only 10% of the time between public notice of a proposed rule and its eventual filing with the secretary of state). In addition, administrators sometimes bypassed review by using Administrative Procedure Act emergency provisions in dubious circumstances. (This will be discussed in Chapter 4.) Finally, concurring with both Bruff and Gellhorn, and Ethridge, he says persistent interest groups were given a "second bite at the apple" and undue influence over outcomes.

Whatever the merits of Lambert's general arguments, there are problems with his finding of "consistency" over time. First, 1976 and 1977 "no action" cases should have been counted as approvals rather than separately categorized, boosting 1975 approval rates from 87.6% to 90.5% and 1976 rates from 72.6% to 80.4%. On the other hand, the approval rate reported for 1978, the first year under reverse veto, is inflated, due to the subtraction of held-over cases from the total on which

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64. Ibid., p.120

percentages are calculated; reported as 78.8%, 1978 approvals are actually 72.8% of all cases decided in that year. These sets of adjustments substantially increase the difference in approval rates between the two time periods. Second, withdrawal rates are mis- or underinterpreted. Agencies withdrew 9.3% of transmittals in 1976 and 16.4% in 1977; after the change in decision rule, rates ranged from 20.5% to 26.6% (1978-1981). Thus, withdrawal rates in the second time period were two and and nearly three times higher than in 1976. Finally, one of his own explanations of department differences in approval rates was based on the veto rule under which major portions of their rules were promulgated. What is the significance of these differences, if they do exist?

McCarty[65] found strong differences between legislator, administrator, and interest group actor perception of the value and impact of the change in Michigan's oversight mechanism.[66] Ninety percent or more of the legislators thought change to the reverse veto was "very beneficial" to the state's residents and "more desirable" than the earlier negative veto, that it had resulted in better rules. Sixty to seventy percent of the lobbyist respondents agreed with these evaluations. In contrast, seventy percent of state government administrator respondents thought the outcome "very detrimental" to

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65. F. William McCarty, "Legislative Veto: The Michigan Experience," College of Business, Western Michigan University, unpublished paper, 1983.

66. McCarty's findings are based on data collected from questionnaires from 40 Michigan legislators, 12 agency heads, and 70 interest group persons and an unspecified number of interviews. He does not indicate how many or which of the respondents had experience under both systems.

state residents, sixty percent thought it less desirable than the earlier veto rule, and forty-five percent thought the change had resulted in poorer rules. It is worth noting in this context that over ninety percent of the legislators thought committee members were highly knowledgeable about rules but that only forty-five percent of administrators rated them this highly.[67]

All three groups agreed that workloads increased as a result of the change from negative to reverse veto. One aspect of the increased workload was increased interaction along all sides of the triangle. Ninety-seven percent of the legislators, 80% of the agency administrators, and 76% of the lobbyists thought there was increased legislator-agency interaction under the new rule. At the same time, 70% of the lobbyists and legislators thought contacts between them had increased, an opinion shared by 60% of the administrators. Interestingly, only 60% of legislators and lobbyists thought lobbyist-administrator contacts had increased under the new veto rule; fifty percent of the administrators thought this was the case. Thus respondents believed the change in decision rule resulted in more work and more interaction, with legislators the key targets in the resulting dynamics.

Legislators and administrators interpreted the results very differently. Legislators (67%) thought relations with administrators had improved; agency administrators (70%) thought the relations were less favorable.[68]

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67. Ibid., pp.15,16.

68. Ibid., pp.17-21.

What was the substance which these attitudinal measures were reflecting? McCarty offers one empirical measure of the results of adopting the more stringent decision rule. During the last two years under negative veto (1975-1976), 83% of rules transmittals won approval; over the next four years (1978-1981), under the reverse veto rule, 75% were approved. He regards this as corroborating evidence of substantive change but presents no statistical measures of significance.

1.4.3 Discussion

What conclusions or direction can be drawn from these seven works? First, divided party control is seen as an important variable in explaining adoption of legislative review of administrative rules, and especially, of the legislative veto (Hamm and Robertson); it may also have a role in determining review outcomes, although Lyons and Thomas differ with Ethridge in its relative importance.

Second, two of the studies present evidence that structural arrangements affect participation. In what is probably an interactive relationship, the more institutionalized the oversight, the more likely it is to be participated in (Lyons and Thomas). At the same time, legislators who do participate may go beyond traditional legislative goals, perhaps in part because they enjoy a certain degree of electoral "safety" (Rosenthal).

Third, attitudes toward appropriate legislative-executive relations and the relative powers of the two branches seem to play a role in the adoption of and personal decision to participate in rules oversight

(Hamm and Robertson; Rosenthal); the specifics of those relationships affect, in a variety of ways, outcome decisions. Bruff and Gellhorn, for instance, identify relative bargaining power, the presence or absence of incremental opportunities for action, and strategic timing decisions by agencies as factors influencing legislative oversight decisions. Ethridge also notes that size of agency and its "clout" are important variables. Lambert documents the ability of agencies to anticipate negative committee action and react defensively and McCarty's findings suggest the change in Michigan's veto rule has resulted in a shift in the balance between the two branches, with administrators now required to interact more frequently with oversight legislators.

In addition, constituency/interest group variables were cited in four of the studies as influences on outcomes, and suggested in two more. Lyons and Thomas presented findings indicating that the more institutionalized the oversight function the more likely it is that constituent concerns will be significant predictors of levels of individual legislator oversight activity. Bruff and Gellhorn, who concluded that legislative oversight is <u>not</u> desirable, were especially concerned about this particular form of responsiveness. They feared the additional step and particular dynamics of legislative oversight made the rulemaking process less representative than administrative rulemaking based "on the record". Ethridge found that the more restrictive a proposed rule, the more likely were interest groups to mobilize in self-defense, often successfully so. Lambert, despite his general support of the legislative veto, agreed that the "undue influence" of certain groups is a potential problem in legislative oversight. He saw the Michigan process giving interest groups the

"second bite at the apple", i.e., the opportunity to obtain through the rules process goals they had been unable to achieve through legislation. McCarty's analysis of the perceptions of interest group interactions with oversight administrators and legislators certainly supports a picture of active constituent participation.

How do Rosenthal's findings regarding altruistic legislators operating out of relatively safe seats correspond to these other constituency findings? Even these legislators must be minimally responsive to constituent demands; oversight may be one way of meeting that minimum while also serving the altruistic goals he identifies.

The Michigan studies offer several additional points of consequence. Lambert's findings of anticipatory modifications made by agency personnel may help explain the differences McCarty reported between legislator and administrator assessments of the status of their relationship after the change to reverse veto. Nearly all legislator respondents rated the members of the Joint Committee on Administrative Rules as highly knowledgeable; administrators sharply disagreed with this assessment. If bureaucracies are "runaway", administrators need pay little attention to legislators; they can ignore technically ill-informed legislators (if that is the case). On the other hand, if they are objects of legislative capture, the primary bureaucratic goal will be to satisfy legislator regulatory needs; technically-derived standards will be secondary, and not particularly sources of conflict. If, however, bureaucrats actively pursue their own goals but under conditions of substantive oversight, they will be required to deal in a more equalized fashion with their legislative overseers, regardless of level of technical expertise, a circumstance which could be

frustrating. Respondents in all three of McCarty's groups agreed contacts between legislators and administrators increased under the reverse veto. Legislators evaluated this positively but administrators did not, suggesting the tensions likely associated with the third, "constrained", model.

McCarty's findings and Lambert's adjusted data suggest there has been significant change in Michigan but tell us little about how or why, with the participation of what forces, and with what systematic consequences. Answering these questions will be a major focus of the work to be done here.

1.5 Rational Actors and Administrative Rules

Several aspects of the previous discussion suggest rational choice theory as a useful perspective on some of the issues under discussion. Rational choice actors have specified goals which serve as the basis from which they analyze and place differential values on alternative actions and sets of consequences. They also have resources which may be used in exchanges with others. They are able to take action on their own behalf, being active participants in a dynamic process rather than "passive registers of outside demands" (Fiorina, 1982b, 41).

As applied to the legislative oversight environment, the approach would explicitly reject the Wilsonian dichotomy between legislation and administration. The promulgation of administrative rules goes beyond purely technical matters devoid of social and political impact.

Administrative rules are determiners, in Lasswell's phrase, of "who gets what, when, how." Whatever the normative arguments, the empirical reality of administrative rule-making includes policymaking and, hence, political components.

In their simplest form, we could posit goals and resources as shown in Table 1.3 for actors involved in legislative oversight.

Table 1.3. Rational Actor Goals and Exchange Resources in a System of Legislative Oversight of Administrative Rules.

Actor	Primary Goal	Primary Exchange Resources Relative to Other Actors[a]
Elected officials	Re-election	A: appropriations I: program benefits, position support
Agencies	Survival	E: constituency benefits I: program benefits
Interest groups	Member benefits	E: electoral support A: program/agency advocacy

[a]Where A = agencies; E = elected officials; I = interest groups.

A fairly developed literature contends that the primary goal of elected officials is re-election (Mayhew, 1974; Ogul, 1977, 217; Arnold, 1979, 28; Fiorina, 1983, 4.) Additional goals of influence within the House and good public policy are offered by Fenno (1973, 1-14), but these obviously rest heavily on re-election, though he sees no necessary hierarchy between the three. Schlesinger (1966) argues that legislators behave within given offices in response to both the current office and their opportunities for and interest in advancement. Ambition may be discrete, static, or progressive, depending on whether the ambition is

directed toward using a specific office for a brief period of time and then moving out of government, maintaining place in a current office, or moving to higher office. For discussion in this section, the goal of re-election is assumed to be primary, whether re-election to the current office or to be elected again but to a new office.

In the case of agencies, the assumed primary goal is agency survival (Arnold, 1979, 20-26; Scott, 1981, 81, citing Gouldner; Wildavsky, 1979, 18-21.) Writers taking this approach frequently view budget maximization as an important secondary goal; still others see it as a primary goal. At least one writer combines the two into a "minimax" strategy under which agencies "advance [their] interests as much as possible while also being least likely to generate intense conflict" (Yates, 1982, 104.) For all, public service, good public policy, and the public interest are subordinate to the survival of the agency as a delivery vehicle.

Interest groups seek member benefits. At a minimum, this means protection of the status quo benefit level. They may seek benefit growth, but also must be aware of the possibility of generating conflict in the process. Interest groups are most frequently involved on the basis of economic self-interest (Olson, 1971) but not exclusively so (Moe, 1980, 112-144.) Other interest group values also make their influence felt in the rules promulgation process.

Within the administrative rules arena each actor has resources of value to the others. The strategies which would result in the most efficient use of the resources are not always clear, however. Incomplete information regarding the true preferences of the other actors and limited control over many elements in the environment make

uncertainty a frequent, if not constant, component of the strategy choice milieu. Indeed, the desire to reduce uncertainty may be a key factor in legislative choice of oversight mechanisms and other actors' responses to those mechanisms.

McCubbins (1983) argues that, in policy areas where there is high uncertainty, legislators will choose administrative processes which force the revelation of interest groups' true preferences. On the other hand, agencies reduce uncertainty by serving legislator interests (Arnold, 1979; Weingast and Moran, 1982; Wildavsky, 1979) at the same time as they may be mobilizing interest (clientele) groups for program advocacy with the legislature (Wildavsky, 1979). Fiorina (1983, 21-22) suggests that interest groups can reduce their uncertainty by being conservative in granting legislators support for received benefits while being generous in the assignment of blame for unfavorable decisions.

What is the source of the growing support at the state level for the legislative veto? It may be a means by which legislators reduce uncertainty--in this case, electoral uncertainty resulting from the "uncontrolled" behavior of bureaucrats in controversial policy areas. If the legislative (electoral) rewards of oversight were indeed few, as in Lyons and Thomas' premise, there would seem to be little incentive for serving on a joint committee (the most common state pattern) which has no authority beyond ensuring that a given set of rules falls within the confines of its supporting statute. It would also call into question the rationality of a legislature which would adopt such an overt and seemingly (in terms of legislative resources) costly mechanism as requiring the prior approval of all administrative rules.

There may be circumstances under which such a joint committee is

worthwhile, however, even though separated from traditional sanctions. It may cause the agencies to reduce their alternatives, moving from that set of all possible rules which could theoretically fall within the confines of a given statute to a smaller set which maximizes electoral benefits for committee members and/or other influential or even all legislators. If so, then both personal and institutional investment of resources would be rational. They would be even more so if oversight goes beyond assuring statutory compliance and, as Bruff and Gellhorn and others have argued, is an additional policy-making arena.

If bureaucrats act as they do because the legislature is in control, then one would predict relatively little disagreement between the two in the promulgation of rules. Rational actor bureaucrats would anticipate legislators' needs as they apply to the rules and would adjust their content accordingly. On the other hand, if the bureaucracy is acting independently but there are adequate incentives for legislative participation in oversight functions, then we would expect to observe a substantial rate of disagreement between legislators and administrators. Legislators acting out of their own interest group pressures or some more comprehensive sense of the public good would be expected to differ with the policy choices of a self-directed bureaucracy.

Legislative overseers may not dominate the situation. The final outcome may be determined by multiple actors in a bargaining context.[69] There is ample incentive for other actors to attempt to co-opt the

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69. For a related budget example, see Gary J. Miller, "Bureaucratic Compliance as a Game on the Unit Square", Public Choice 29 (1977): 37-51.

responsible legislative body. For other legislators, it could provide another opportunity to secure policy goals (and constituent support) not achieved through legislation. For governors, it could represent an additional means of keeping the bureaucracy under executive control, enhancing electoral rewards for that office. Successful agencies could transfer resources otherwise expended in meeting rule oversight demands to benefits for key clientele groups. Finally, interest groups could benefit greatly from a review body which, in effect, allowed them to write their own rules. These are not necessarily mutually exclusive results; the setting presents the potential for a non-zero sum game with several possible outcomes.

1.6 Summary

Three competing theories explaining incentives for the adoption of and participation in legislative review of administrative review have been outlined, two ("runaway" and "captured") from the academic literature and what appears to be a third model ("constrained") underlying the rise in state adoption of oversight. Most research, however, has been directed toward Congressional review. It is suggested that it might be possible to resolve conflicts between these models by expanding analysis to incorporate more state level data.

Congressional review has differed in several respects from that of most of the states, including Michigan. Within Congress, review operated through the conventional subject matter standing committees, sometimes

of both houses of the legislature, sometimes only one, depending on the statute under which a rule had been promulgated. Whatever the case, oversight was a less concentrated and centralized activity than under most state review systems, certainly less so than with Michigan's single, specialized, joint oversight committee with systematic review of all changes in administrative rules.

The research here will examine the Michigan case, one of the most dynamic of review systems currently operative within the United States, as a device for clarifying incentives, relationships, and results relating to legislative review of administrative rules. The Michigan case allows us to test the three theories against a substantial data base, an overall structure significantly different from the Congressional model, and under two different decision rules—one, the more conventional "negative" veto, and the other, the "reverse" veto, at the extreme of currently operative state decision rules and far more stringent than the case in the earlier Congressional studies. It expands the range of variation beyond that otherwise possible to observe, potentially enhancing the clarification and interpretation of factors influencing the legislative disposition of administrative rules. Moreover, by providing for relatively controlled comparison of outcomes under differing decision rules, it enriches our discussion of the effects and merits of less and more overt oversight mechanisms.

Chapter 2

The Research Design

There has been only limited study of state level legislative oversight of administrative rules, and virtually none of it within the context of the legislative veto. This research therefore begins with the basic level analysis necessary to establish a base for then more complex examination of dynamics and outcomes of the oversight environment and process.

The strategy adopted for this research employed both quantitative and qualitative approaches. I gathered information on a wide range of elements in the rules promulgation environment and process and analyzed it from several different perspectives. Much of the work was necessarily preliminary rather than finally determinitive. Interviews, for instance, were conducted for hypothesis generating purposes as well as case study development and hypothesis testing.

Some hypotheses were much more readily tested than others, but none were discarded at the outset simply because they seemed to present difficult measurement problems. My working assumption was that so little specific knowledge exists in the area that any systematic collection and analysis of data, however tentative and preliminary, would be useful. If it did not immediately contribute to answers, it

would at least suggest possibilities for future investigation.

2.1 The Data

The research was based on a several different types of data. A primary resource was outcome data from the Joint Committee on Administrative Rules (JCAR)—over 1,900 cases covering a thirteen year period from December 9, 1971 through December 31, 1984.[1] These cases included all the transmittals received by the committee from the beginning of Michigan's systematic legislative review of administrative rules through those decided at the final 1984 meeting of the committee.

Procedural data was also important, including changes in the Administrative Procedures Act and in the committee's own rules from the time of Michigan's first Administrative Code Act in 1943 through the most recent amendments to that act and the subsequent administrative procedures acts. Information was collected relating to the early history and development of legislative review in Michigan, including early legislative and gubernatorial interchanges on the subject, mostly through the Michigan Senate and House journals. The journals also

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1. Data source was the "Daily Status Report", the unpublished running record maintained by the Joint Committee on Administrative Rules, State of Michigan. That record contains the transmittal number assigned by the JCAR staff when the proposed rule is received in the committee office, the name of the department submitting the rule, a brief description of the rule, the sections of the administrative code involved, date of receipt, date of JCAR action, date filed with the Secretary of State, and date the rule took effect.

provided the dates of legislative recesses and changes in committee members. Committee staff information was obtained from the journals, various editions of the Michigan Legislative Handbook, JCAR annual reports, and the offices of the Secretary of the Senate and Clerk of the House. Membership data for the JCAR and several other legislative committees, especially the appropriations committees, was collected for years 1971 through 1984.

Observation at meetings and personal interviews were the remaining key sources of information. Meetings of the Joint Committee on Administrative Rules, as is the case for all other legislative meetings in Michigan, are open to the public. I attended thirteen meetings of the full committee and six meetings of the subcommittee between December, 1983, and August, 1984. Additional data were gathered through interviews persons involved in all aspects of the rules promulgation and oversight process, including:

A. From the legislative branch:

Joint Committee on Administrative Rules
- Current members (9)
- Past members (3)
- Special counsel and assistant special counsel (2)

(Other) former legislators (2)
Legislative Service Bureau (2)
Senate Republican Caucus Staff (1)
House Democratic Research Staff (1)
House Fiscal Agency (1)

B. From the executive branch:

Governors' legislative liaisons (2)
Assistant attorneys general (3)
Agency directors and deputy directors (5)
Other agency personnel (8)

C. From the public:

Business group representatives (4)
Labor group representatives (2)
Public interest, consumer, or good government groups (5)
Self-represented (1)

The June, 1984, two-day workshop sponsored by the Administrative Law Section of the State Bar of Michigan also yielded useful information. The workshop focused on rulemaking, the role of the Joint Committee, and the problems and merits of the legislative veto. In addition to hearing several formal presentations on these subjects, I also was able to meet in informal discussion with a number of people who had been intimately involved with the oversight process through the years. This served as a valuable check point on some of the ideas I was developing.

2.2 Time Periods

Much of the analysis is within the context of three time periods. They are slightly different from the periods discussed in the last chapter, mostly because almost no further attention is given to the "complaint" period (1947-1971). The focus from this point forward is on the "modern" era of Michigan's legislative review, i.e., that time during which there has been systematic review of all rules. It is those years which are now divided into three periods. The first two periods are distinguished by the type veto operative while the third holds veto type constant relative to the second but introduces change in a major political

variable and in committee membership. I will briefly review those periods.

Time Period 1: 1972-1977. During this time, rules took effect unless the legislature took negative action (concurring resolutions of disapproval), hence, the term "negative" veto. A Joint Committee decision to turn down a rule had the legal status of a recommendation to the legislature; it had no binding effect on the departments.

Time Period 2: 1978-1982. The earlier veto rule was reversed. Agencies were now required to win the prior approval of the legislature in order to promulgate rules. In addition, the Joint Committee was empowered by statute to make a binding decision without further legislative action.[2]

Time Period 3: 1983-1984. The decision rule remains the same as in period 2 (the reverse veto) but political factors change so this period is sometimes split into two still smaller units for analysis. Throughout the first two time periods, Michigan had the same governor, Republican William G. Milliken. The legislature had a Democratic majority in both houses.[3] Beginning in 1983, Democrat James Blanchard was elected and for the first time within the framework of this study executive and legislative branches were controlled by the same party.

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2. A former legislator and member of the JCAR speaking at the State Bar's June 1, 1984, workshop referred to this as the "no-house veto." (Anthony Derezinski, "Michigan's 'No-House Veto': The Role of and Pressures Upon the Joint Committee of Administrative Rules." Speech, Lansing (Delta Township), Michigan.)

3. The only exception to this is with the Senate that was elected in the election prior to the time period which begins this study. The Senate had a Republican majority from 1971-1974. Democrats had the majority in the House at that time.

In addition, there was an unusually high turnover of JCAR members at the beginning of the 1983 legislative session.

In November of 1983, the state's first successful state-level recall elections resulted in two Democratic senators losing office. In the ensuing special elections they were replaced by two Republicans, giving that party the majority in the Senate for the first time in the scope of this study. Thus, not only were new Senate JCAR appointments made in 1984 but, for the first time since prior legislative approval of administrative rules had been required, the committee delegations from the two houses had majorities of different parties.

Circumstances in these two years therefore presented the opportunity to test, if only tentatively, several hypotheses regarding the influence of partisan and institutional factors for which there were no prior data.

2.3 Hypotheses

Hypotheses were generally of two types: 1) those which tested procedural and structural influences; and 2) those which tested strategic influences. This section discusses the hypotheses, outlines the data used to test each of them, and the basis upon which they would be evaluated.

Hypothesis 1: Substantial visible legislative activity occurs in the oversight of administrative rules in the state of Michigan.

Both theories current within the academic literature predict little

visible oversight activity. In the "runaway" argument, this is because there is no consequential oversight to observe, regardless of where one looks. In the "captured" model, it is because existing, relatively routine sanction systems keep bureaucrats under control without more overt measures. The purpose of this first hypothesis is simply to provide a framework for presenting data concerning the magnitude and frequency of visible legislative oversight of the promulgation of administrative rules in the state of Michigan. If there is little or none, we are back to the initial theoretical problem. If substantial activity of this type is encountered, though, this would suggest a weakness in existing theory and will be regarded as justification for further investigation.

Hypothesis 2: The Joint Committee on Administrative Rules represents an important focus of legislative activity in the oversight of the promulgation of administrative rules.

Several measures from both institutional and individual legislator perspectives are used to test the significance of the Joint Committee on Administrative Rules (JCAR). These include: 1) the proportion of decisions of the Joint Committee on Administrative Rules upheld, directly or indirectly, by the legislature as a whole; 2) seniority and number of members assigned to the Joint Committee of Administrative Rules; 3) responsibilities assigned by the legislature to the joint committee; and 4) level of other institutional resources invested in the JCAR. If the committee acts on few rules or if the legislature as a whole regularly disregards its recommendations or overrides its decisions, if it acts only occasionally and purely on a complaint basis and is given little authority and few resources with which to conduct

its business, then the committee is of small importance and little interest. On the other hand, if the Joint Committee on Administrative Rules acts on a large number of rules, if its decisions are regularly upheld by the legislature, if it practices routine review of rules, and is given substantial authority and staff resources, it will be argued that this committee is an important focus of legislative activity in the oversight of the promulgation of administrative rules.

Hypothesis 3: More stringent legislative oversight mechanisms will be associated with lower rates of rule approval.

This hypothesis will be tested first in the context of a single decision rule change—that from negative veto to reverse veto. It will be argued that the negative veto, under which administrative rules take place unless specifically rejected by the legislature, will result in higher rates of approval than will be the case under the reverse veto, in which no rule takes effect until it receives the approval of the legislature. A special condition of legislative action as it operates within the joint committee context is the requirement of concurring majorities between the delegations from the two houses of the legislature. The impact of this requirement will also be examined for variation in accord with veto rule. The hypothesis is further tested by examining the effects of the increase in the length of time allowed for committee review.

In each case, the expectation is that as legislative authority is increased, rate of rule approval will decline. If that should prove not to be the case, we again face the original theoretical dilemma. If these changes have no effect on outcomes it could be due to either of two reasons, that: 1) bureaucrats are indeed uncontrollable, and

"runaway", or 2) other legislative oversight methods are sufficient and satisfactory and there is no need to push bureaucrats to higher rates of compliance nor sufficient latitude for them to depart substantially from current levels of anticipation of legislator wishes. Thus, failure of this hypothesis will not help distinguish between the two existing academic models. Should it prove to be supported, however, I will argue that this is evidence of the efficacy of greater institutional investments, and a refutation of both prior theories.

Hypothesis 4: Individual JCAR member votes will vary in accord with: a) the transmitted rule's conformity to the authorizing statute (legal model); b) the JCAR member's personal vote on the authorizing legislation (personal history model); c) regulatory ideology; and d) political party.

This hypothesis tests four of the more straightforward possible explanations of individual member votes. The legal model—voting on the basis of whether a rule is in conformity to its authorizing statute—would provide a relatively simple basis for deciding whether to approve a rule.

The Michigan Administrative Procedures Act requires rules proposals to be certified for conformity to statute by the office of the Attorney General prior to transmittal to the Joint Committee. If all rules are then approved by the committee, the hypothesis would be supported. On the other hand, if a certified rule is denied approval by the committee, it will have been established that conformity to statute is a necessary but not sufficient condition for approval, and the model inadequate as an explanation for individual votes.

There is a second level at which it is possible to test the hypothesis regarding conformity to statute. The joint committee staff

makes an independent assessment of the legality of a proposed rule. It is possible for a rule to be certified by the attorney general's office but for the joint committee staff to find it inadequately supported by statute. Again, the same tests will apply, leading to confirmation or rejection of the hypothesis.

Proposed rules frequently are based on statutes passed many years before. This time lag may result in current JCAR members having no personal history on the authorizing statute, offering nothing to aid in prediction of those cases, and reducing substantially the number of cases available for testing. Nevertheless, for those cases where the JCAR member did vote, it would be particularly interesting to establish the degree to which opposition to the legislation results in opposition to proposed rules. The JCAR vote may represent a final opportunity to influence policy on a specific issue, something which may be of special importance to minority members. This model is given only limited attention in this research; it will be an area suggested for further research.

Basic regulatory stance may well be an important factor in the individual JCAR member voting decision. Even if the committee were comprised totally of highly anti-regulatory members, however, there are certain constraints upon its decisions. Consistent disapproval of rules, for instance, could cause departments to avoid entirely the rules process and to use guidelines and adjudication as policy setting mechanisms. This constraint may somewhat depress the variation which might otherwise occur. Data presented here (largely from interviews and observations of the present committee) for the testing of this hypothesis are limited and tentative, but important nonetheless.

Regulatory stance may well represent an important connecting link between individual legislator motivation and institutional incentives and I will at least begin the documentation of how it relates to the rules oversight process in Michigan.

Partisanship is also a possible influence on outcomes. The assumption here is that party reflects underlying policy preferences which will inform and influence the individual voting decision. Because of the importance of party in legislative organization, this explanation has institutional ramifications as well, leading to two further and closely related hypotheses.

Hypothesis 5. Approval rates will be higher under same party legislative-executive control than under split party control.

Hypothesis 6. Approval rates will be lower and impasse higher under split party legislative control than under same party control.

If party is an important indicator of policy preferences and the chief executive and legislature are of the same party, then one could argue there should be additional constraints on bureaucrats during periods of shared party control. On the other hand, if party is not important in this regard, we would expect no variation on this basis.

Testing of Hypothesis 5 obviously requires times when the legislature and executive branches are in control of different parties and times when they are in control of the same party; only one year of the thirteen is under split control (1983). Similarly, to test Hypothesis 6, there must be times of shared party control and split party control within the legislature; split party control occurred only for 10 months in 1984. Thus, in each case, environmental conditions provide for only a limited test of the hypothesis.

Testing of Hypothesis 5 will be a simple contingency analysis comparing outcomes during reverse veto under both shared and split legislative and executive control. Similar analysis will be done for Hypothesis 6, as well as an analysis of the occurrence of "impasse." The incidence of "impasse"—failure to reach a decision due to opposing majorities between the House and the Senate—would appear to provide a quick index of the importance of party within JCAR decision making.[4]

If party-correlated variation in outcomes is observed, it will be regarded as evidence supporting the "constrained" theory. If there is no such correlation, interpretation will be less clear, particularly because of the limited test data in each case. It could demonstrate the difficulties of a new governor asserting control over the administrative apparatus, rather than any weakness of the theory. It might be the result of institutional loyalties stronger than party loyalties while not yet telling us anything about the degree to which bureaucrats are or are not runaway, captured, or constrained. And, it could be evidence of the irrelevance of the overt oversight process—reaffirming the merits of the prior theories while again failing to distinguish between them.

Hypothesis 7: The Joint Committee on Administrative Rules yields legislator benefits.

This simple appearing hypothesis hides multiple facets. Theoretically, there are a number of ways in which such a committee

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4. A more substantial test could be conducted by vote-by-vote analysis of committee records to see how the operating majorities are put together over time. Unfortunately, while that approach is of theoretical interest it is hampered by the committee's record keeping system; individual votes are maintained for only two years. I did not pursue that avenue here.

could yield legislator benefits, not the least of which is reduction of electoral uncertainty. Several measures of the extent and type of benefits yielded by JCAR membership are available. Those which will be pursued here are committee member seniority and committee turnover, patterns of movement into and out of the committee, data on campaign contributions, and JCAR members' own perspectives on committee power and benefits of service, and similar perspectives from other actors. If only junior members serve on the committee and do not return, this will be regarded as evidence that JCAR service yields few benefits. Alternatively, if the committee attracts senior members, and they tend to return to the committee, this will be evidence supporting the hypothesis. Testing of data regarding committee membership and turnover and campaign contributions will be combined with more subjective data in an attempt to establish a fairly comprehensive picture of incentives and motivations for serving on the committee. This analysis will not directly distinguish between models; it will help define the structure and content of oversight environment parameters.

Hypothesis 8: Rules approval rates will vary by department.

Do outcomes vary by department? If so, why? Equally interesting, if not, why not? A priori possibilities for variation on a department basis include systematic differences in the degree of controversy attached to the rules handled by different departments, level of resources devoted to the rules review process, administrative skill in handling the rules review process, type of clientele affected by the rules, and type of benefits available to use in the various exchange relationships involved. If there is little variation in rates of

success it suggests that these things are not important. It would appear that bureaucrats across departments were similarly and successfully either eluding legislative control or, alternatively, anticipating legislator needs and responding to them. If, on the other hand, there is substantial variation between departments, this would suggest the system does present difficulties for at least some bureaucrats. Variation could help us understand the ways in which bureaucrats are "constrained" if that, indeed, is the case.

Initial testing is based on examination of approval rates of individual departments. Additional data on several departments more frequently submitting rules proposals are presented, including two short case discussions.

Hypothesis 9: Administrative agencies will choose rule promulgation strategies which enhance JCAR approval rates.

This hypothesis is directed toward a baseline analysis of agency activity. It rests on the assumption that the JCAR influences the ability of bureaucrats to realize their own goals. Arnold (1979) and Wildavsky (1979) offer particularly useful perspectives for thinking about strategies agencies may employ in the rules promulgation process and the JCAR decision point. Data on several possible strategies will be collected. These include timing of transmittals, targetting of benefits to JCAR members' constituencies (whether geographic or interest group), invoking outside authority (federal regulations, Legislative Service Bureau), incremental changes which cumulatively result in much greater change, use of emergency rules to prepare a public for regulation (thereby reducing opposition to rules promulgated through the regular procedure), using the unacceptability of an existing situation

as a lever to secure otherwise marginally acceptable changes, and mobilization of public support and pressure.

Establishing the existence of such patterns of behavior would be strong support for the constraint theory. Truly runaway bureaucrats would not need to engage in such activity; truly captured bureaucrats would not have the independent goals which would lead them to these strategies. There is a potentially even stronger test, however, suggested by Hypothesis 10.

Hypothesis 10: More stringent legislative oversight will result in a greater proportion of administrative resources being devoted to meeting oversight demands, and less administrative initiative in rule-making.

This hypothesis will be evaluated only in the context of the JCAR. For it to be true it will be necessary that changes affecting JCAR processing of rules do occur and that the JCAR represent a point of substantive legislative influence. Assuming that those two factors will have been previously demonstrated, relevant agency data will then include patterns of department organization, internal departmental rules promulgation procedures, number of agency-sponsored hearings prior to transmittal to the JCAR, and the number of rules transmitted. Bureaucrats, particularly in a tight budget world, have no rationale for investing unnecessary resources in the oversight process. If the application of increasingly stringent oversight mechanisms is followed by greater investment by agencies in the rules development process, this would be further evidence of the efficacy of more overt oversight. More centralized or formalized procedures, a greater commitment of agency resources to personnel and hearings dealing with the promulgation of rules, or reduction in the numbers of rules would all be considered

supportive evidence.[5] If, on the other hand, none of these things occurs, that will be regarded as evidence bureaucrats are in truth runaway or, alternatively, that the additional structure is redundant and counter-productive.

Hypothesis 11: The governor's office will attempt to influence the decisions of the Joint Committee on Administrative Rules.

If the JCAR exercises substantive influence over administrative activity, its decisions should be of interest to the chief executive, the governor. The process could offer the governor an additional means of exercising control over the executive branch. On the other hand, if the governor cannot influence the committee, then the review process may reduce the ability of the governor to exercise management control over the executive branch. The rational choice perspective would suggest that the governor will be involved in the review process to the degree that such involvement can yield benefits in excess of costs, and a better cost-benefit ratio than alternative methods. The system operates in such a way that there is very little direct evidence of gubernatorial influence. Testing of this hypothesis will rest on interview data, and brief analysis of the emergency rules process, the only area under Michigan's APA which provides for direct gubernatorial involvement.

Hypothesis 12: Interest groups will seek to influence decisions of the Joint Committee on Administrative Rules through a) mobilization of political pressure, and b) application of rewards and sanctions on the basis of individual issue votes.

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5. The one exception would be the case wherein a decrease in rules going through the JCAR is matched by the number of emergency rules being promulgated.

Hypothesis 13: Interest group participation at the Joint Committee on Administrative Rules level will generally be restricted to high demand and highly organized groups; legislators on the committee will tend to be viewed as advocates for or representatives of the positions of such groups.

If the JCAR represents an autonomous decision point in the process, and if rules affect the distribution of benefits and costs, then it should attract considerable interest group attention.

Several direct measures are available to test these last two hypotheses, although there are time limitations for most. Campaign financing data for elections for all state offices from 1978 on are available from the office of the secretary of state. In addition, the committee maintains, but for a two-year period only, a record of all persons testifying before the committee, and their affiliations. These data give direct evidence of interest group activity during part of the period under study. Interview data were collected regarding participation and the extent to which particular members of the committee were regarded as allies or obstacles to the interests of particular groups, as well as those for their opponents. Information was also gathered regarding interest group perspectives on the bases of individual JCAR voting decisions, and the best strategies for influencing those decisions.

I attempted to collect data regarding the ways in which the change in the veto decision rules may have changed either the pattern, content, or effects of interest group participation. Here, again, time was a problem. With the committee maintaining for only two years the data which would provide some of this information, I had to rely on interview data. Few respondents could offer sufficiently detailed information to support strict analysis.

This is the least developed area of the dissertation. More anecdotal than systematic, it nonetheless offers a tentative analysis of some of the factors and at least suggests likely directions for further work. At a minimum, it should be clear that complete lack of participation by interest groups would be evidence of the lack of consequence of this investment of legislative resources. On the other hand, substantial, prolonged participation by the public would seem to indicate that this investment of legislative resources significantly affects the distribution of resources. If that is the case, this would be evidence supporting the constrained bureaucrat model over the other two.

1.4 Analysis

Many of the hypotheses are susceptible to quantitative analysis. As much of the data and frequently the dependent variable are nominal or ordinal level data, simple contingency analysis is generally appropriate. Preliminary work had already shown such analysis to be productive in this research context both in generation of further hypotheses and in contributions to substantive conclusions.

Some hypotheses were either not of a type or not yet at a level which made even contingency analysis appropriate, however. In these cases, my goal was to provide the bases for other logical analysis or to collect at least enough data to be able to draw tentative conclusions which could become the basis for suggestions for further research.

1.5 Summary

This research represents an effort to conduct intensive empirical research of a largely ignored intersection of legislative and administrative responsibilities--the legislative oversight of administrative rules. While most of it was directed toward testing of specific hypotheses, other work was still exploratory, collecting data for further hypothesis generation. The research uses the experience of one state to study factors potentially influencing legislative review activity in all states.

Within the context of incentives and institutional forms, then, the major goals of this research are as follows. First, I seek to establish the degree to which Michigan's Joint Committee on Administrative Rules (JCAR) represents an independent decision point in the rules promulgation process and determine the results of the JCAR's disposition of administrative rules transmittals, testing alternative explanations for any observed change over time. Second, I attempt to ascertain the types and degree of investment of resources devoted to the review process and to document and explain the participation of the various actors in that process (including legislators, governor, departments, and interest groups), and the extent to and means by which the process provides benefits to the participants. Finally, it is my hope to achieve a substantial enough understanding of the Michigan system to be able to make generalized arguments concerning the relative effects,

costs, and benefits of more and less overt legislative oversight mechanisms as means to greater control of administrative activity and, thus, the merits of the three models: "runaway", "captured", and "constrained".

Chapter 3

Legislature, Committee, and Outcomes—Legislative Oversight and the Joint Committee on Administrative Rules

At least two major measurement problems were identified in Chapter 1. The first was that of finding a means to distinguish between the operationalized realities of the two theoretical models and the second, to distinguish between and understand the relationships between institutional and individual measures of oversight investment. This chapter seeks to address those problems in the Michigan context.

The chapter has four main sections. The first begins the assessment of the degree to which there is direct, observable, legislative oversight of administrative rules promulgation in the state of Michigan. It establishes the number of rules transmittals handled by the legislature, the role of its designated agent, the Joint Committee on Administrative Rules (JCAR), in determining the outcome of those rules transmittals, and conducts initial analysis of the degree to which legislative review is substantive rather than merely symbolic. I next analyze the relationship between certain decision rules—type veto, majority requirements, and duration of review period—and review outcomes. The focus then shifts to questions of the level of legislative investment, both institutional and individual, in the review

process with several measures provided in an attempt to establish the degree and type of investments made in Michigan's oversight process, their relationships, and consequences. Finally, I look at ways in which certain aspects of the review structure enhance efficiency and reduce uncertainty, reviewing the ways in which this oversight structure provides institutional and individual benefits.

3.1 Legislative Review—Location and Outcomes

Hypothesis 1: Substantial visible legislative activity occurs in the oversight of administrative rules in the state of Michigan.

Systematic legislative review of administrative rules began in Michigan in 1972. Administrative agencies were directed, as had been the case previously, to transmit all future changes to the existing administrative code—additions, deletions, amendments—to the legislature's Joint Committee on Administrative Rules. The new element in 1972, however, was that rules would not take effect prior to this transmittal but were subject to a 60-day legislative review period. Approval rested upon staying within the confines of the authorizing statue and legislative intent and the expediency of the rule.[1] Beginning in 1980, the legislature added the further requirement that agencies file a regulatory and fiscal impact statement with their

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1. Language regarding legislative intent had been part of the governing sections of the state's APA since Michigan 1947 PA 36 (Sec. 8e.); the expediency language was added under Michigan 1969 PA 306 (Sec. 51).

transmittals, adding further statutory authority for the committee's review decision.[2]

The discussion which follows, both in this and other chapters, will address in a variety of ways the manner in which the resulting review constitutes a substantive oversight process. That process, it will be shown, applied eventually not only to newly promulgated rules, as required above, but also to existing rules. Here, however, for the purpose of giving the reader some immediate sense of the degree to which the process of Michigan legislative oversight of administrative rules is systematic, unique from other review mechanisms, and visible, I offer Table 3.1—the number of transmittals received in the first eleven years of the new process.[3]

Table 3.1. Administrative Rule Change Proposals Transmitted to the Joint Committee on Administrative Rules, 1972-1982.

1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	Total
90	131	176	135	172	129	162	157	158	166	141	1,617

Source: Compiled from the "Daily Status Report", unpublished record of the Joint Committee on Administrative Rules, State Legislature, State of Michigan, December 8, 1971 through December 31, 1982.

Each of these 1,617 rules proposals was formally received by the committee. Each was subsequently scheduled for public hearing by the

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2. Michigan 1980 PA 455 at 45(.2), (.4).

3. Michigan 1971 PA 171, under which this review was initiated, took effect December 2, 1971. Twelve rules proposals were submitted by administrative agencies before the end of the year. Two were acted upon by the committee on 12/09/71; the others in 1972. These twelve cases are included in the 1972 data.

committee. The sponsoring agency, all members of the legislature, and interested parties outside state government were advised of hearing dates. Staff analyses of each transmittal were prepared and forwarded to committee members' offices. At the scheduled committee meeting (by state statute, open to the public), testimony was received from agency personnel and members of the public, and questions directed to them by members of the committee. At a minimum, the formal aspects of Michigan's review are visible.

The receipt and visible formal processing of 1,617 proposals does not of itself constitute substantive nor necessarily visible operative review. The above process could be merely symbolic activity prior to routine approval of agency proposals. Deals could be cut which made the "open" meetings mere sham. Even if these possiblities did not materialize and the committee conducted careful, independent review, it could find itself without legislative support for negative action.

Before we can deal with these issues, we need some sense of the degree to which the designated committee is, indeed, a significant factor in the review process. If it never challenges agency proposals, the entire matter is of little interest. Alternatively, if its decisions are systematically overturned by the legislature, we need to look elsewhere to understand the way in which legislative oversight operates in this situation, if at all. That leads to a second hypothesis.

Hypothesis 2: The Joint Committee on Administrative Rules represents an important focus of legislative activity in the oversight of administrative rules promulgation.

By statute, review operated through the Joint Committee on

Administrative Rules, with the possiblity of action by the full legislature under certain circumstances. Table 3.2 summarizes the joint committee's disposition of all proposed administrative rules transmitted to it from 1972 through 1982.

Table 3.2. JCAR Disposition of Rules Transmittals: 1972-1982.

	N	%
Approved[a]	1,305	80.7
Withdrawn by agency	272	16.8
No action (1978-1982)[b]	3	0.2
Impasse	10	0.6
Disapproved	27	1.7
Total	1,617	100.0

[a]Includes 76 "no action" cases (4.7% of total) from 1972-1977 which, under the negative veto rule, automatically took effect at the end of 60 days.
[b]Subsequently submitted to the legislature under concurrent resolution of approval.

Source: Compiled from the "Daily Status Report", unpublished record of the Joint Committee on Administrative Rules, State Legislature, State of Michigan, December 8, 1971 through December 31, 1982.

The most common outcome of review by Michigan's Joint Committee on Administrative Rules is approval of the proposed rule. Of the 1,617 rules considered by the JCAR in the years 1972 through 1982, a total of 1,305 were approved at the committee level--80.7% of all cases. Thus, four-fifths of all rules transmittals were approved, most with no recorded formal legislative intervention.[4]

On the other hand, 19.3% of the cases between 1972 and 1982 do

4. Some of the approvals are rules which had been previously withdrawn and were approved upon resubmittal. A later measure will take this into account, calculating an adjusted approval rate.

offer direct evidence of some level of legislative intervention. In this group are cases either 1) withdrawn by the administrative agency prior to committee disposition, or 2) voted upon but not winning committee approval. The more likely occurrence is withdrawal of a rule, a protective action taken by agencies after an unfavorable reception at a rule's initial JCAR hearing.

The reader may have noticed that Table 3.2 carries no category labeled "amended". The committee, from its beginnings in 1947, has been prohibited from amending administrative rules proposals. Should the committee disagree with certain portions of a rule, it must make a decision—whether to accept the rule as a whole with imperfections, or deny the rule as a whole regardless of its residual merits. (In this respect it faces the dilemma common to chief executives in this country who have general but not item veto powers.) This is not to say that the committee has no informal amendatory power. The threat of disapproval, if substantive, could provide incentive for an agency to withdraw a rule and resubmit it in a more acceptable form. Agencies withdrew the proposed rule in 16.8% of the cases (87.2% of transmittals not approved) suggesting that the informal power may be considerable.[5]

Cases voted upon but not winning approval fall into three categories: outright disapproval under either veto rule, and "no action" (lack of sufficient votes for action, rather than no vote) and "impasse"

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5. In addition, committee pressure sometimes leads agencies to publicly clarify proposed interpretation and application prior to approval of a rule; the record fails to provide any information on intervention at this level. Eight months of observation of the current committee, however, leaves me confident that even with this type of intervention counted, the substantial majority of cases would correctly be described as involving no overt legislative intervention.

(lack of concurring majorities) under reverse veto. Outright disapproval of a rules transmittal, the outcome most likely to excite comment, has occurred only 27 times in the entire eleven years, for 1.7% of all cases. Instances of "no action" under the current reverse veto are quite rare—0.2% of all cases.[6] "Impasse", which occurs as a separate outcome only under the current veto rule, accounts for only 0.6% of the cases. These three categories combined comprise just 2.5% of all cases (and 12.8% of transmittals not approved).

While approval remains the most likely outcome of legislative oversight in Michigan, nonetheless, the 19.3% of the cases not approved probably have disproportionate importance. These cases usually demonstrate areas of relatively high public policy conflict within the dynamics of Michigan state politics. The handling of these rules will be of particular interest as we move to discussion of legislator, agency, and interest group interactions. (See Chapters 4 and 5, especially.) For the moment, however, discussion will focus on two other matters: 1) specifics of committee power as they affect the processing of rules transmittals and 2) the shift in the power balance between legislative and executive branches which occurred as a result of a change in decision rules affecting the committee.

From the beginning in 1972 of systematic committee review of proposed administrative rules, the committee has had full approval power. There has been no statutory provision for routine intervention by the full legislature in the case that the joint committee approved a

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6. "No action" under the earlier negative veto rule constituted automatic approval; those 76 cases were counted as approvals. See Table 3.2, note "a".

rule or it was withdrawn by the sponsoring agency. With 80.7% of all cases approved by the committee, and another 16.8% withdrawn by the agencies,[7] only 2.5% of all transmittals had any potential for action by the full legislature.[8] Even then the type and extent of involvement varied in accord with the veto rule operative at the time.

Under the 1972-1977 negative veto provisions, a committee disapproval had the force of a recommendation to the legislature; rules took effect unless the legislature subsequently passed a concurrent resolution of disapproval within thirty days. That provision tipped the balance between the branches in the direction of the executive. If the legislature failed to act, the agency position prevailed.[9] The JCAR considered 784 cases in the six years under the negative veto provisions; it voted disapproval only 11 times (1.3% of those cases). The legislature upheld the committee's vote in nine of the eleven cases. In the other two, the legislature failed to pass the required

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7. Only one agency request to withdraw a rule has been denied by the committee, an occurrence regarded as something of a fluke by most observers and even members of the committee. (This occurred at the December 6, 1983, meeting. It was apparently in deference to the wishes of a Senate member who wanted to be sure the agency got the message he did not wish to see another rule with similar content.)

8. Under Michigan 1947 PA 35, M.S.A. 3.560(7b), the legislature reserved "the right to approve, alter, suspend, or abrogate any rule promulgated pursuant to the provisions of [that] act." In 1958, under PA 177, M.S.A. 3.560(12a), it further provided that any member of the legislature could introduce a joint resolution or bill to "express the will of the legislature that (a specific) rule should be revoked or altered." If the agency failed to act in accord with such a sentiment, the legislature could abrogate the rule by legislation. With 1969 PA 306, M.S.A. 3.561.150, it was further stipulated that the legislature could, through the bill process, amend a rule. Action under any of these provisions is almost nonexistent.

9. As noted before, this was also true if the legislature's agent, the committee, failed to act.

resolution of disapproval and the rules took effect, as did the 76 transmittals on which the committee failed to act.

Provisions adopted in 1978 with the reverse veto substantially shifted the balance between the branches in regard to the promulgation of administrativew rules. A committee vote of either approval or disapproval was fully effective without further legislative action. The committee considered 833 cases between 1978 and 1982 under this rule. The committee's sixteen disapprovals during that time were themselves fully binding on the departments. "No action" cases (insufficient votes for approval or disapproval), on the other hand, required the committee to introduce a concurrent resolution of approval.[10] There were just three "no action" cases among the 833 handled between 1978 and 1982; the legislature passed one of these sets of rules and the other two died in standing committees.[11] Before, the agency "won" if the legislature failed to act; under the new rule, the agency "lost" in that circumstance. The committee's position was strengthened in the process and the balance of power shifted toward the legislative branch.

In summary, a total of 1,617 cases were decided by the JCAR from 1972 through 1982. Immediate approval was denied by the committee to 19.3% of all transmittals. Of those cases where the legislature had opportunity to act, it failed to sustain the decision of the committee in only 3 cases. Thus, initial quantitative analysis provides strong

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10. The JCAR tries to avoid this outcome. To do otherwise would give up committee authority and also require their colleagues to take on a burden of detail which most are not interested in.

11. An "impasse" (opposing majorities) had the same substantive effect as a vote of disapproval during this time; ten proposed rules failed to take effect because of such a committee outcome.

evidence of the degree to which the review function and authority are focused on and within the committee. The committee wields both formal and substantive power, power far beyond that of most legislative committees. In addition, changes in veto rule strengthened the relative importance of the legislative branch in the rule promulgation process, further strengthening the role of the committee itself.

Interview data additionally support these conclusions. Members of the committee and staff, and agency administrators and interest group representatives closely associated with the rules promulgation process routinely state that other legislators, legislative committees, and the legislature as a total body are simply not involved in the process. Exceptions are extremely rare. Even in the case of rules mandated by new legislation, the subject matter standing committees virtually never communicate with agency personnel or JCAR members or staff as the implementing rules are developed.[12] A current member of the JCAR offered one explanation of this behavior:

> "Partly it's that the standing committee people don't have time for this, but it's more than that. They think when the legislation is passed the battle is over; business knows better. That is just one of the battles."[13]

This is not to say that one need study only the committee to understand the outcomes of the review process. Other chapters will demonstrate the role of a variety of actors and factors. The argument

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12. This is not because they are not informed of which rules are pending. By statute, the JCAR routinely informs all standing committees and all legislators of the rules to be discussed at each JCAR meeting.

13. Representative Virgil Smith, interview, Lansing, Michigan, June 20, 1984.

here is merely that the committee, as opposed to the full legislature, is the operative unit in Michigan's legislative oversight of administrative rules and is at the nexus of legislative-executive-interest group interactions relative to the promulgation of administrative rules.

3.2 Decision Rules and Outcomes

The previous section has already discussed one way in which decision rules are important elements in the oversight environment. In this section, I will consider another way in which they are important, specifically relating three decision rule changes to the rate of rule approval. Although divided into two subsections, both are addressed to a single hypothesis:

Hypothesis 3: More stringent legislative oversight mechanisms will be associated with lower rates of rules approval.

3.2.1 Veto Rules and Majority Requirements

Several references have been made to the differing effects of certain kinds of committee action (e.g "no action"), depending on the veto mechanism operative at the time. The next obvious question is whether those differences have any systematic effect on outcomes and impacts of the review process. More specifically, does requiring the

legislature to give prior approval of proposed changes in administrative rules result in lower rates of approval?

Table 3.3. JCAR Disposition of Cases—Approved or Other—by Type Veto, 1972-1982.

	Negative veto (1972-1977)		Reverse veto (1978-1982)		Row	
	N	%	N	%	Total	%
Approved	729	(87.5%)	576	(73.5%)	1305	(80.7%)
Other	104	(12.5%)	208	(26.5%)	312	(19.3%)
Column total	833		784		1617	
%		(51.5%)		(48.5%)		(100.0%)

Corrected $X^2 = 50.27$
$p = .0001$
Yule's Q = .434

The change from the negative to the reverse veto decision rule is clearly associated with change in transmittal outcomes. Table 3.3 yields a X^2 significant at the .0001 level, and a Yule's Q of .434, indicators of a substantial relationship between the type of veto mechanism and rule approval. The likelihood of rules not taking effect increases significantly when agencies are required to win prior legislative approval; it more than doubles under the reverse veto mechanism.

At least two decision-rule factors help explain the observed variation: 1) the requirement of concurring majorities, operative under both veto mechanisms, and 2) the resulting differing effects of either a negative vote, a "pass" (abstention), or an absence under the two decision rules. During much of the history reported in Chapter 1, committee decisions were made by simple majority vote. Beginning in 1969, however, the statutory requirement of "concurring majorities" was added to the JCAR's decision making procedures. With the eight-member

committee (1972-1977), this meant that committee action would require agreement of at least two Senate and three House members; with the ten-member committee (1978-1982), it required three Senators and three House members. This requirement interacted with the change in the veto rule in such a way that the effect of a negative vote was strengthened over time.

Under the negative veto procedures (1972-1977), proposed administrative rules took effect unless the committee voted disapproval (and was supported by the legislature's adoption of a concurrent resolution of disapproval). During that period then, at least five properly distributed negative votes (of eight) were required to block a rule's taking effect (and even then, might be overturned by the legislature). Five House votes were insufficient to block a vote without the minimum two from the Senate for a concurring majority. Under this rule, the substantive effect of a "pass" or absence was that of a vote for approval, since the rule would take effect in the absence of sufficient votes against it.

The reverse veto mechanism (1978-present) greatly changed these dynamics. Under the reverse veto rules take effect only with the support of concurring majorities. Now with five members from each chamber, a minimum of six votes, three from each chamber, is necessary for approval. If three members from the Senate or three from the House vote against a motion to approve, a proposed rule will be blocked from taking effect, even if all other seven members favor the motion. This failure to take effect, however, would not constitute "disapproval" under current practice. Formal "disapproval" requires concurring majorities voting for a motion to disapprove. Should the motion to

disapprove also result in opposing majorities, the result would formally be known as an "impasse". Although the name differs, the substantive effect is the same; having failed to get the necessary concurring majority, the rule does not take effect. Under this decision rule, then, a "pass" vote or an absence has the effect of a vote for disapproval, since it fails to contribute to the votes necessary for a rule to take effect.

Under the negative veto rule (1972-1977), then, a minimum of five votes of eight (62.5%) was required to block a rule; under the reverse veto (1978-present) as few as three of ten (30%) can achieve that result. The effect is to strengthen the individual vote which would deny the agency authorization to promulgate the rule under consideration. An expansion of Table 3.3 suggests that the agencies were fully aware of and took action to meet this greater possibility of a negative outcome. (Agency strategies will be discussed in Chapter 4). Table 3.4 shows that decreased approvals is largely the result of an increase in withdrawals.

Table 3.4. JCAR Disposition of Cases—Approved, Withdrawn, and Other—by Type Veto, 1972-1982.

	Negative Veto (1972-1977)		Reverse Veto (1978-1982)		Row	
	N	%	N	%	N	%
Approved	729	(87.5)	576	(73.5)	1305	(80.7)
Withdrawn	93	(11.2)	179	(22.8)	272	(16.8)
Other	11	(1.3)	29	(3.7)	40	(2.5)
Column total	833		784		1617	
%		(51.5)		(48.5)		(100.0)

$X^2 = 51.79$
$p = .0001$
Yule's Q = .428

Outcomes within the time periods offer additional support for the hypothesis that approval rates will decline under more stringent veto mechanisms. Not only do the rates differ significantly between time periods, as demonstrated in Tables 3.3 and 3.4, but there is no overlap between time periods. Table 3.5 shows that approval rates under the less stringent negative veto rule, ranging from 79.9% to 93.3%, are never as low as they are under the reverse veto, where they vary from 71.4% to 75.9%.[14]

Table 3.5. JCAR Disposition of Transmittals (and Incidence of Subsequent Approvals by full Legislature) by Veto Rule and Biennium, 1972-1982.[a]

	1972		1973-74		1975-76		1977[b]	
Negative Veto Rule	N	%	N	%	N	%	N	%
Total transmittals	90		307		307		129	
Approved	84	(93.3)	276	(89.9)	266	(86.6)	103	(79.9)
Withdrawn	3	(3.3)	28	(9.1)	41	(13.4)	21	(16.3)
Disapproved	3	(3.3)	3	(1.0)	0	(0.0)	5	(3.9)
(# leg. approvals)	(0)		(2)		(0)		(0)	

	1978[b]		1979-80		1981-82	
Reverse Veto Rule	N	%	N	%	N	%
Total transmittals	162		315		307	
Approved	118	(72.8)	225	(71.4)	233	(75.9)
Withdrawn	40	(24.7)	73	(23.1)	66	(21.5)
No action	1	(0.6)	1	(0.3)	1	(0.3)
Impasse	1	(0.6)	7	(2.2)	2	(0.6)
Disapproved	2	(1.2)	9	(2.9)	5	(1.8)
(# leg. approvals)	(0)		(0)		(0)	

[a]Some column totals vary from 100.0% by 0.1 due to rounding.
[b]The years 1977-78 were also a Michigan legislative biennium but are separated here because of the change in the decision rule.

14. This also holds true if the percent approval is calculated by year, rather than biennium. Annual rates of approval range from 79.8% to 93.3% under negative veto; from 70.9% to 75.9 under reverse veto.

3.2.2 Duration of Committee Review Period

One of the arguments against legislative review of administrative rules is that it creates additional and unnecessary delay in getting regulations in place. Those favoring such oversight counter that any delay is a reflection of the need for review and brief in any case relative to the total time involved in promulgating rules. This suggests two further avenues of investigation: 1) the degree to which Michigan's review process delays the promulgation of rules; and 2) whether delay periods vary by veto mechanism.

The time elapsed between receipt of a rule and action by the joint committee varies considerably. Observed intervals range from no days at all to as many as ninety-two.[15] The mean interval for the entire eleven year period for time elapsed between receipt of a rule and JCAR action on the rule is 38.4 days.

There is a priori reason to expect the mean interval between receipt of a rule and JCAR action will vary by veto mechanism. The act which originated systematic review by a joint committee of the legislature allowed up to two months for action. The time limit was increased, however, by the 1977 amendment which also created the reverse

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15. Rules voted upon on the same day they were received were generally substitutes for a rule previously heard at least once by the committee. With modified language already worked out, "clearance" secured from the various interest groups, and the required certifications by the Attorney General and the Legislative Service Bureau in hand, the agency would appear at a committee meeting requesting permission to withdraw proposed rule "A", and submit proposed rule "B" for immediate action. If there were no complaints from any source, including members of the committee, the rule would likely be passed immediately.

veto. Beginning in 1978, the committee was authorized to vote a 30-day extension of the review period for any specific rule pending before it. Use of that authority would tend to increase the mean elapsed time.

Table 3.6. Mean Time Elapsed between Receipt of Proposed Rule and JCAR Action, All Years, and by Veto Period.

Time Period	Mean Time Elapsed (in days)	Std Dev	N
All years (1972-1982)	38.4	21.4	1617
Negative Veto (1972-1977)	33.4	17.9	833
Reverse Veto (1978-1982)	43.8	23.4	784

Difference of means test statistics (negative and reverse veto periods):
t = 9.96
p = .0001

Table 3.6 shows a ten day difference between the mean intervals, a difference significant at the .0001 level. Is elapsed time before the committee a predictor of a rule's eventual outcome?

Using a three-step coding for "outcome"—approval, withdrawal, and other—and the actual number of days elapsed between receipt and action by the JCAR, the correlation coefficient over the entire time period is .2493 (p = .001). Within time periods, it is .1337 under negative veto and .2626 under reverse veto (both significant at the .001 level). The strength of the relationship is nearly doubled under the reverse veto, with time elapsed between receipt and action more strongly related to outcome under the reverse veto, but is relatively weak in both cases. This, however, is an overly stringent measure. Proposed rules are logged in by committee staff on a workday basis but the committee meets, at most, weekly, and sometimes only once a month. Table 3.7 gives

additional perspective on the relationship, using data grouped on a monthly basis.

Table 3.7. JCAR Disposition of Rules Transmittals (in Per Cent) by Veto Period and Days Held by Committee.

Outcome	Negative Veto (1972-1977)[a]				Reverse Veto (1978-1982)				
	0-31	32-62	Row N	%	0-31	32-62	63-92	Row N	%
Approved	92.1	83.2	(729)	87.5	81.4	75.5	55.1	(576)	73.5
Withdrawn	7.9	14.2	(93)	11.2	16.4	21.4	37.2	(179)	22.8
Other	0.0	2.6	(11)	1.3	2.2	3.2	7.7	(29)	3.7
Column N	(404)	(429)	(833)		(269)	(359)	(156)	(784)	
%	48.5	51.5		100.0	34.3	45.8	19.9		100.0
X^2 =			19.619					37.643	
p =			.0001					.0001	
Yule's Q =			.407					.348	

[a]From 1972-1977, the statute limited the review period to two months.

The negative veto period grouped data show a statistically significant difference of 8.1% between rates of approval for those rules held for up to one month and those which took more than one month. Under the reverse veto, the difference between cases decided within their first month and the second is only 6.1%, but there is a dramatic decrease in approval of cases held into the third month. Approvals drop 20.4% between the second and third months; only 55.1% of cases going into the third month win approval. Although the cases categorized as "other"—those disapproved under either veto rule and no action or impasse outcomes under reverse veto—are few, the change is in the expected direction; the percentage of these cases increases unidirectionally with time before the committee.

The third month of review does not cause rules not to be approved.

Instead, it reflects a certain level of controversy already having surfaced; "easier" rules, on the average, are taken care of more quickly. The relationship is probably interactive. On the one hand, those rules which are voted the extension of the review period are most frequently those about which there already has been complaint, whether by JCAR members or outside interested parties.[16] The decision to extend is usually a signal of a rule in difficulty. In addition, the longer a proposed rule is pending, the more opportunity people have to find something wrong with it and to mobilize forces for opposing it. Extension increases a rule's vulnerablity to opposition.

3.2.3 Decision Rules and Outcomes Summary

Three measures of oversight stringency were reported here: 1) veto rule--negative or reverse (the latter requiring prior legislative approval); 2) majority requirements--simple versus concurring; and 3) length of allowed review period. In each case, the hypothesis was supported. More stringent decisions rules uniformly resulted in lower rates of rule approval.

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16. Some cases are granted an extension simply because the committee calendar has gotten overloaded. If not for these cases, the rate of approval in the third month would be even lower.

3.3 Investments in the Review Function

One issue raised in the literature is the relationship between institutional and individual investment in legislative oversight. This section looks at several measures in both categories, focusing at the individual level on those legislators who have formal responsibility for Michigan's rule oversight function—the members of the Joint Committee on Administrative Rules.

3.3.1 Institutional Investments

The assignment of members and other legislative resources to any committee necessarily represents an institutional investment, incurring both direct and opportunity costs. Level of staff support, committee workload, and patterns of committee assignments all serve as indicators of the institutional value of a given committee including that of a committee whose main responsibility is oversight.

Staff support. When first constituted in 1947, the Joint Committee on Administrative Rules had three members from each house, lacked its own staff, and met only a few times during the legislative interims. This generally low level of investment continued for a number of years. The only staff support the committee had was that provided through regular staff of legislators serving on the committee.

The 1967 committee report contains the first record of separate

staff for the Joint Committee on Administrative Rules (JCAR), and the first record of formally "loaned" staff. Explicit institutional investment in the joint committee at that time included the committee's own counsel and secretary, and regular assistance from one Legislative Service Bureau staff member.[17]

In 1972, the legislature again increased JCAR staff. With no reduction in Legislative Service Bureau staff,[18] the joint committee was authorized to directly employ a legal counsel, administrative assistant, committee clerk, and part-time secretary. This change was a direct result of the increased responsiblities placed upon the committee by the 1971 amendments to the APA. Doubling the JCAR staff provided the personnel to ensure the amendments had not been purely symbolic activity.

The most recent adjustment in JCAR staff occurred in 1977. Since that time, the committee has employed two attorneys (special and assistant special counsel, or two co-counsels) and an administrative assistant, an overall investment level roughly equivalent to the

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17. The Legislative Service Bureau (LSB) was created in 1965. Although its major responsibilities revolved around the drafting and printing of bills it soon become involved in the rules process as well. Agencies would frequently send proposed rules language to the LSB for informal review prior to submitting it to public hearing. The bureau would review the form, classification, arrangement, and numbering of the rule. Once hearings were over, any necessary changes would again be made, and the rule resubmitted to the LSB, this time for formal approval. This regular processing by the Legislative Service Bureau is itself an indicator of increased legislative investment in rules oversight. See "Report on the Administrative Process in Michigan State Government," State of Michigan, Legislative Service Bureau, Vol. 3, No. 2 (Revised February 1983), p.6.

18. In fact, the Legislative Service Bureau increased in staff during this time.

immediately preceding period.

Staff support provided for the activities of Michigan's Joint Committee on Administrative Rules has thus exhibited each of the levels of institutional investment discussed by Lyons and Thomas in their 1982 cross-sectional study. In the JCAR's early years, as they report being the case in 1982 in Missouri, there was no formal direct staff support. Eventually the committee was given its own aide and secretary, but professional staff was "on loan" (from the Legislative Service Bureau), similar to the pattern observed in Tennessee. The changes since 1972, with the JCAR directly employing both professional and clerical staff, represent a level of institutionalization and commitment similar to that they encountered in Florida.[19] If we were to assess the level of legislative oversight of administrative functions in Michigan solely on the basis of mean legislator involvement in oversight activity, this

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19. Rich Jones' report for the National Conference of State Legislatures offers a state-by-state accounting of staff commitments and in some cases, dollar costs as well. [See "Legislative Review of Administrative Rules: An Update," State Legislative Report Legislative Management Series 7:4 (April, 1982), first table (unnumbered).] Of the 14 states for which he had a direct dollar cost, Michigan ranked fourth. It was sixth of forty-one in direct staff commitment. The critical factor in the historical comparisons being reported here is the number and level of staff over which the JCAR has direct control. There may actually be more staff involved. Individual legislators continue to use members of their personal staffs in various ways in meeting their responsibilities to the committee. There is also a member of the Senate Republican caucus staff who regularly reviews the rules and provides analyses to Senate Republicans on the committee. In addition, members sometimes temporarily "borrow" other committee staff over whom they have control and assign them JCAR-related duties. A recent example of this is assigning work relating to the JCAR subcommittee created in 1983 to an aide newly hired to the House Elections Committee staff. Three members of the JCAR also serve on Elections, including the member who serves as chair of both.

type of increased commitment would probably not be captured, and the level undoubtedly underestimated.[20]

Committee Workload. Committee workload is yet another indicator of institutional investment in oversight. The time legislators spend in fulfilling their duties for any given committee necessarily reduces the time they are available to the chamber for other functions. Committees within the Michigan legislature vary greatly in the amount of work they do and the amount of time required of their members. They range from those which literally never meet within some legislative biennia to those which meet almost weekly when the legislature is in session.

By this measure also, the Joint Committee on Administrative Rules reflects an increasing and substantial institutional investment. In the five years immediately preceding the implementation of the 1971 amendments, for instance, the committee met an average of 5.4 times per calendar year. Regular review changed that dramatically. The average number of meetings between 1972 and 1977 is 26.6. After the change in the veto rule, it increased again, to an average of 31.0 meetings per year, much higher than is the case for most Michigan legislative committees. Moreover, these are merely the formal committee meetings, the meetings during which they receive public testimony regarding specific rules proposals, debate, and take action on them. There may be numerous additional consultations with interested parties, including

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20. This is particularly true because the number of legislators directly participating in the oversight of administrative rules is very small. Norms of legislative specialization in Michigan are such that it is usually only the members of the committee who are involved at any significant level.

other committee members, beyond this time commitment. Members of the committee routinely stated that they spend more of their week on JCAR-related work than has been the case for most other committees on which they have served.

Seniority and Number of Members. The final indicators of institutional investment to be looked at are relative seniority and number of committee members. Table 3.8 reveals that House members appointed to the JCAR begin in 1971 with a mean term of service just slightly higher than that of the rest of the House (3.80 and 3.62 terms, respectively). The mean for all other members in the House remains quite stable throughout the entire period, but steadily rises for JCAR members; continuously more senior members were being appointed by the House to the JCAR. (The only exception is between the 1977-78 and 1979-80 biennia, when it remains unchanged.) By 1982, JCAR House members have an average of two terms (four years) more experience than do the rest of their colleagues.

Comparing these data with those from two other House committees throughout the same period helps interpret the importance of these differences. Throughout these twelve years, even at the beginning, there is never as much as a one term difference between the means for House JCAR members and those appointed to the House Appropriations

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21. Michigan's House and Senate appropriations committees enjoy the kind of power and status common to their counterparts in many other states and Congress. Any bill requiring an appropriation is referred to these committees once favorably reported out of the subject matter standing committees. In addition, appropriations bills take precedence over other bills—they are placed at the head of the calendar each day and are given "preference in printing over other bills." See the Michigan Legislative Handbook, House Rule 42 (1971-1983), and Senate Rule 23.b (1971-1979) and 3.35 and 3.37 (1980-1983).

Committee.[21] The House Marine Affairs Committee, in contrast, has a

period mean of only 2.55 terms, more than a term less than the House period mean, and over three terms less than either Appropriations or House JCAR members. This substantial variation between committees within the House underscores the extent of the House investment in the joint committee.

There are at least two reasons to expect smaller Senate than House variation on this measure. First, Senators serve four-year, unstaggered terms; committee appointments are made at the beginning of each new Senate and tend strongly to be continued throughout that senate's four-year duration. There may be a few changes, due to death or resignation and special election replacement of members but, in general, Senate appointments remain stable by four year periods. Michigan Senate elections in the reported period resulted in new senates being seated in 1971, 1975, and 1979. The impact is reflected in Table 3.8, which shows change in Senate JCAR members' mean term of service only every four years. In contrast, five of the six House JCAR means vary from the previous biennium.

In addition, a total of only 38 senators is distributed among seventeen committees, none of which has less than five members, and some of which have had as many as 13 (Appropriations, during part of this period). First term members serve on all committees; Appropriations is not excepted. This factor also tends to reduce Senate variation in committee mean terms of service.

Table 3.8. Mean Terms of Service--Members of Joint Committee on Administrative Rules, All Other Legislators and Appropriations Committees (by Chamber), and House Marine Affairs Committee.[a]

	1971-1972	1973-1974	1975-1976	1977-1978	1979-1980	1981-1982	Period Mean
House (n=110)							
JCAR (5)	3.80	4.80	5.00	5.60	5.60	5.80	5.11
Other (105)	3.62	3.46	3.59	3.50	3.80	3.80	3.63
Approp (16-18)	4.50	4.88	5.25	6.42	6.00	5.92	5.50
Marine (5-11)	3.09	2.33	2.54	2.86	1.85	2.60	2.55
Senate (n=38)[b]							
JCAR (3,5)[c]	1.00	1.00	2.00	2.00	2.20	2.20	1.63
Others (35,33)	2.57	2.41	2.04	1.74	2.20	2.11	2.18
Approp (8-13)	2.50	2.65	1.95	1.72	2.04	1.96	2.41

[a]House terms are for two years; Senate terms are for concurrent four year periods. Between 1971 and 1976, all Senate appointees to the JCAR had prior legislative experience in the House; this measure includes only their service in the Senate. Number of members serving on committees changes over time.

[b]Committee appointments are made at the beginning of each new legislature; they change little, however, unless it is also the seating of a new Senate. Senate members of the JCAR remained unchanged from 1971 through 1974 and 1979 through 1982.

[c]The number of Senate members was changed from 3 to 5 with the 1977 amendments to the Administrative Procedures Act.

In 1971, one year before the beginning of routine legislative review, the Senate appointed three first termers to serve on the JCAR;[22] the Senate JCAR mean term of service at that time was only 39% of that for all other senators. Those same senators continued through the next four years, a time of notable increase in JCAR authority and activity. In 1975, at the first real subsequent opportunity, the Senate appointed members with a higher mean term of service—double that of the previous four years and equal to the mean for all other senators.[23] Indeed, from 1975 on, the mean term of service of Senate JCAR members equals or exceeds both the mean for all other senators and those on Senate Appropriations. The lower Senate JCAR period mean is solely the result of the low 1971-1974 mean. Despite chamber limitations, the Senate had increased investment in the joint committee, with the results slightly exceeding even Appropriations.

An increase in Senate investment is also reflected in the change in the number of members serving. The 1977 amendments to Michigan's APA increased Senate JCAR membership from three to five of its thirty-eight members. This change is particularly evidence of the importance of the committee to the legislature as a whole and to the Senate, and the problems created by the multiple committee responsibilities of the small number of senators. Rep. Thomas J. Anderson, committee member from 1969-1982 and chair or vice-chairperson from 1975-1982, reported the

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22. Although in their first Senate term, each had previously served in the House.

23. None of the Senate members appointed in 1975 had previously served on the JCAR, so the difference is not simply a retention of the same members.

expanded Senate membership was partially to make it easier to get a quorum.[24] Under the negative veto decision rule operative at the time, if the committee failed to have enough votes to take action within the prescribed time period, the rule took effect by default. It was apparently easier to get 3 of 5 senators than 2 of 3 at any given meeting; expanding the membership had the effect of strengthening the legislature's position relative to the executive.

Summary. On each of the measures discussed above, the Michigan legislature has made a substantial and increasing institutional investment in the oversight of administrative rules. It has provided direct and increasing staff support to the Joint Committee on Administrative Rules, increased the responsiblities and workload of the committee, and the seniority and number of members serving on the committee.

3.3.2 Career Investments

Individual legislators make investments in committees, just as do legislative institutions. Legislators do not completely control the committees to which they are appointed, but individual preferences are at least considered as the leadership makes committee appointment decisions.

How do individual legislators come to serve on the Joint Committee on Administrative Rules? Interview data suggest that most members of the

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24. Interview, Lansing, Michigan, August 1, 1984.

committee have requested the assignment, but not all. The rational actor perspective would imply that legislators prefer certain committees over others for the anticipated resultant benefits. These benefits are most usually assumed to be direct and personal, and for the legislator, to be interpreted in terms of contribution to re-election. Rosenthal's work, on the other hand, suggests there exists a particular type of legislator who seeks a less direct benefit and pursues the more generalized goal of improving the functioning of government. This is not necessarily an alternative explanation of legislator behavior. Legislators interested in improving government may well see membership within the legislature as an important vantage point from which to accomplish such a goal; as such, they would also have a major interest in re-election.

Committee turnover has frequently been used as one indicator of committee status and desirability. That measure will be used here as one index of the career investment made by individual legislators in the Joint Committee on Administrative Rules. There are problems with such a measure, however, because it fails to distinguish between turnover resulting from exit to other committees and turnover resulting from failure to return to the legislature (or that chamber of the legislature).[25] Table 3.9 demonstrates the difference.

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25. One might argue that failure to return to the legislature is evidence of poor choices in committee assignments; the legislator failed to make investments that returned adequate electoral benefits. That possibility will be dealt with only indirectly here. I will point out, however, that one of the seven former JCAR members who did not return to the state legislature and the committee did so because he was elected to the U.S. House of Representatives.

Table 3.9. Number and Percent of JCAR Members Returning to the Committee—Measured by a) Number of Seats Available and b) Number of Members Returning to the Legislature (Same Chamber).

	1973-1974	1975-1976	1977-1978	1979-1980	1981-1982	Period Mean
A. Total JCAR seats	8	8	8	10	10	
Members reapp'ntd	6	4	5	6	7	
% of total seats	75.0	50.0	62.5	60.0	70.0	63.5
B. Previous-term JCAR members in legisl'tr	6	6	9[a]	10	7	
Members reapp'ntd	6	4	5	6	7	
% of total possible	100.0	66.7	55.6	60.0	100.0	76.5

[a]Exceeds number of seats due to a mid-term resignation from the committee in 1977. That member later returned to the committee.

Most JCAR members who returned to the legislature returned to the committee, a mean of 76.5 percent.[26] Some, however, accepted other assignments. (See Table 3.10.) Four senators, for instance, exited to an exclusive appointment on the appropriations committee, including one to appropriations vice-chair; they were assigned to no other committees or leadership positions. One senator left in 1975 to become majority floor leader and chair the senate business committee. Only one departing senator did not move to a substantial new position.[27]

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26. This percentage slightly underrepresents the degree of committee return, due to the special case discussed in the note to Table 3.9. If 1977-78 were calculated on the basis of 5 returnees of 8, the value for that year would be 62.5%, raising the period mean to 77.8%.

27. Sen. Donald E. Cooper, R-Rochester, in 1975, continued to serve on two other committees (corporations and economic development, and judiciary), dropped labor and the JCAR, and added the commerce committee to his assignments. The resulting package of committee assignments seems particularly in line with traditional Republican policy interests. The fact that this single exception was a minority party member may reflect the difference in majority and minority party perceptions of oversight efficacy reported by Lyons and Thomas.

No House member left the JCAR without obtaining a substantial position elsewhere, but the positions did not include the Appropriations committee. Instead, they moved to major leadership positions or to chair committees other than Appropriations.[28] Leadership positions included House Democratic floor leader, and House minority leader. New committee appointments included chairing the committee on Corporations and Economic Development (as well as vice-chair of Judiciary) for one member; chair of Environment and Agriculture (and vice-chair of Judiciary) for another.[29]

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28. One interesting case not included in the above time period is that of a member still on the committee in 1984. He reported he did not request a JCAR appointment but accepted it as an alternative, and a favor to the House leadership, to avoid a fight for chair of the House Committee on the Judiciary. He wanted to try keep his JCAR seat even if the judiciary leadership were made available to him in the next session. As it turned out, he gave up the JCAR seat in 1985 to head the House committee on Economic Development and Energy, continued as majority vice-chairperson of taxation and member of the House committee on the judiciary, and added labor.

29. The difference observed here between House and Senate movements out of the JCAR may indicate that the ladder to Appropriations is "longer" in the House, or it may indicate other differences between the career ladders in the two chambers. The greater variation in seniority, number of members, and committees in the House may allow or cause the existence of several career ladders. Appropriations is surely at the top of at least one, but perhaps not all of them, although its prestige and power are generally regarded, by inside and outside observers alike, as very high. The simple explanation may be the correct one; Table 3.8 shows the House Appropriations committee to have a higher mean seniority than is the case for House members on the JCAR. I look forward to someone else's work on this question.

Table 3.10. Movement out of JCAR, 1973-1981.

	1973	1975	1977	1979	1981	Total
Returning legislators exiting from JCAR[a]	0	2	4	4	0	10
Exited to:[b]						
Appropriations	0	0	2	2	0	4
Chr., other committee	0	0	1	1	0	2
Major leadership pos'n	0	1	1	1	0	3
Other	0	1	0	0	0	1

[a]Includes all previous-term JCAR members continuing in legislature who did not return to the committee. The number is equal to the difference between lines 1 and 2 of Part B, Table 3.9, above.

[b]Not necessarily exclusive appointments. A single individual may have been elected to a major leadership position and also appointed to one or more committees. This measure reports only the primary responsibility.

Thus, although specific patterns vary somewhat between the House and the Senate, it is clear that individual legislators have made significant investments in legislative oversight in the state of Michigan, just as has the legislature as an institution.

3.4 Efficiency and Uncertainty Reduction

3.4.1 Joint Committee Members

The work of the Joint Committee on Administrative Rules is somewhat different from that of most legislative committees. In writing bills, legislators are involved in broad policy scope within a specific subject area. On the JCAR, responsibility tends to be simultaneously broader and more detailed. Because the committee deals with literally every

department of state government, committee members are required to have (or develop) at least some understanding of policy implementation throughout the full range of state government responsibilities. This goes beyond the understanding required of many of their legislative colleagues. In addition, they are required to address a level of detail which goes beyond that of legislation, since that is the inherent nature of rules content.

Obviously, in the legislative process, legislators are required to vote on matters from the full range of state policy. Often, however, they can base their votes on the work or recommendation of respected colleagues, especially those serving on the standing committee of jurisdiction; individual legislators maintain a fairly narrow base of expertise. Members of the JCAR must operate quite differently. They cannot defer to the judgement of their party counterparts on the respective standing committees because those colleagues in most cases lack knowledge of the intricacies of the rule promulgation and implementation processes; moreover, they are unlikely to have any position on the issues before the JCAR. This is at least partially a reflection of the fact that most rules appearing before the committee deal with precisely those details that the legislature at large had previously determined it did not want to deal with. In addition, many current rules proposals are revisions of rules previously promulgated under statutes passed years earlier; such rules are even less likely to capture the interest of current standing committee members. To be an effective member of the JCAR, then, requires uncommon breadth and depth of involvement, even though it is formally a restricted involvement.

In sharp contrast to most legislative committees, the Joint

Committee on Administrative Rules lacks the power to amend. The traditional "mark-up" sessions, with their attendant bargaining and log-rolling, are simply not a part of the JCAR review process. This is not to say there is no negotiation (some of that has already been suggested and more will be shown in the next chapter) but members are not supposed to be developing new policy. Instead, their responsibility is to assure that existing policy is being properly carried out, that the intent of the legislature is being met, that the rule is "expedient", and that the right of "the people" to participate in the rule promulgation process has been assured. This significantly changes the role of the legislator and affects committee decision making dynamics. JCAR members and staff alike spoke of the difficulty new members have in learning to work in this framework.

The Joint Committee on Administrative Rules disposes but does not propose, at least not formally. It may require additional hearings, it may make clear to an offending agency the language it would find more acceptable, it may suggest that certain parties need to reconcile their differences, but formally, it can neither require nor substitute language. It exists, at least on the surface, in an either/or world.

Despite their restriction, members uniformly characterized the JCAR as a powerful committee. They variously described it as a mini-legislature, the last arbiter, and the place where the action is. At the same time, they all spoke negatively of anyone who would use the committee as a means to further policy goals they had been unable to achieve through the legislative process. Committee members were unanimous in their response to a question regarding what they would do should a rule come before them promulgated under a statute which they

had voted against: if the rule were in accord with the law and the intent of the legislature, they would vote for approval.

One should not be misled by the above for the matter may not be so simple. Several past or current members indicated they would be very careful in the above circumstances that rules did not exceed the act and that they did the bare minimum. In addition, one recent member of the committee reported an interesting conversation with a predecessor. The earlier member said he could usually find something to hang his hat on if he wanted to vote against a rule, although sometimes one would be so well drawn that he would have to vote for it, despite inclinations to the contrary. Such comments suggest both that the process is not as formalistic as it may first appear and that members are more stringent in scrutiny of rules based on policy with which they disagree.

There was another way in which committee members go beyond the formalistic confines of legislative intent. Michigan statutues carry no statement of "legislative intent." The language of the statute is supposed to speak for itself; this adds to the discretion of agencies and the committee alike. Particularly in the case of proposals for revision of rules authorized under old statutes, where circumstances may have changed considerably, there could be considerable ambiguity concerning what the original intent may have been and how it might apply in the new situation. Such ambiguity makes it possible for the committee to be more responsive to current policy preferences, whether of legislative colleagues, interest groups, or the public at large. Committee members understand the policy defining aspects of administrative rulemaking and, as one said, want to have that last bit of influence into the process.

Members are likely to identify only indirect linkages between their JCAR service and their constituents. In interviews, most of them indicated receiving very few contacts from their districts in regard to a rule proposal. One recent head of the committee recalled only two contacts from his district regarding the content of proposed rules and he voted contrary to the requested direction in one of those cases.[30] On the other hand, requests for assistance from district residents are frequently rule related, giving committee members a broader perspective on implementation problems; this can be helpful in judging the merits of current rule proposals. In addition, although the committee usually deals with rules with statewide application, members may interpret them in a localized fashion. One member, commenting on rules stipulating the drugs and supplies required to be carried on emergency vehicles, noted his constituents travel throughout the state; he wanted to be sure they received adequate assistance wherever they might be.[31]

One current JCAR member has departed from the norm and actively uses the committee to develop constituency linkages. He sends letters to or otherwise contacts persons in his district whom he believes might have reason to object to a pending rule. This simultaneously provides him communication with constituents, shows him to be "doing his job", and provides his own personal "decibel meter" for monitoring the degree of controversy associated with rules as they move through the review

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30. The more active role of interest constituencies as compared to geographic constituents is discussed in Chapter 5.

31. Former Rep. Ernest Nash, R-Dimondale, speaking during regular meeting of the Joint Committee on Administrative Rules, State of Michigan, December 6, 1983.

process. It has the potential of increasing the electoral benefits of oversight activity. To the degree that Michigan's institutional structure provides a framework within which to do this, it lessens and indeed may overcome many of the oversight disincentives identified by Rosenthal and others.

Rosenthal argued that the legislature's oversight specialists will have three key characteristics: a desire to improve the performance of government and to increase their personal knowledge of how government works, and a commitment to strengthening the legislature as an institution. JCAR members seem to have a fairly clear vision of government and its appropriate relation to those governed, although they differ in these visions. Virtually all interviewed former and sitting members of the committee enuciated a concern for making government work and saw themselves as the people's advocates in the process of reviewing the rules. This is true in two regards. First, the merest hint that an agency failed to completely comply with requirements regarding notices to the public and full and open hearings will almost guarantee a proposal will not win approval until the allegation is resolved. Second, the committee considers not only conformity to statute but also the likely impact on the public of the proposed rule. They have statutory support for bringing such concerns to the rule review process but they seem also to possess personal predilection for such an approach.

JCAR members frequently see themselves and each other as hard workers who are interested in details. Veteran members of the committee were very critical of any member who lacked commitment to keeping up with committee "homework." On the other hand, they spoke with respect of

and deferred to the specialized knowledge in certain areas of their various committee colleagues. (In the process, they demonstrate in a much smaller circle the same sort of collegial deference which operates on a larger scale in the legislature as a whole between committees.) A single unresolved question raised by a respected colleague at a hearing could cause postponement of action on a rule. On the other hand, members sometimes got a reputation for always being down on a certain agency; in that case, their opinion might be disregarded by their colleagues.

There are two fairly simple ways in which we can get at least some sense of these legislators' attitude toward the institution they serve, and serve in. Where you sit may indeed foretell if not determine where you stand on the issue of legislative veto; it certainly seemed to for former and current members of the joint rules committee.[32] Without exception, they expressed support for the legislative veto in general and saw Michigan's change to the more restrictive reverse veto as a necessary tool for keeping the executive branch agencies under control. As one member told me, the reverse veto was "the greatest thing since

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32. An intriguing historical example of this principle is contained in the career of former Governor William G. Milliken. In 1962, as a state senator, he voted to override then Gov. John Swainson's veto of a measure which would have required prior approval of rules covering "vessels carrying passengers for hire." This was an institutional commitment over a policy commitment, for he had earlier voted against the measure. Fifteen years later, in 1977, then himself governor, he experienced the only override of a veto in his entire fourteen year as chief executive. The issue?—the requirement of prior legislative approval of administrative rules, the reverse veto. The dispute was much publicized for it evoked institutional and partisan wrangling of a type which was rare during the Milliken years. For a quick review, see Senate Journal, 1977, State of Michigan, pp.1563-1565, containing Senators Cooper, Welborn, and Allen's statements, and Swainson's veto message of 15 years earlier.

sliced bread"—everybody should have it.

A slightly different perspective on institutional commitment is attachment as it relates to political ambition. Schlesinger's three types of ambition—discrete, static, or progressive—seem appropriate here. Of the total of 15 House members on the JCAR between 1972 and 1984, only two have subsequently run for higher political office, one for state senate (unsuccessful) and one for Congress (successful). In contrast, of seventeen senators serving during that time, five have later run for higher office: two for governor, one for U.S. Senate, one for U.S. House of Representatives, and one for Michigan Court of Appeals. Yet another is reputed to have ambassadorial ambitions. To date, none has been successful.

Senate members of the JCAR thus seem to be more progressive in their ambitions than are House members, but in both cases, the substantial majority appear to be static. Specifically how they compare to other colleagues throughout this period on this measure I do not know but the earlier seniority data suggest they are at least no more progressively inclined and may, in fact, be more statically inclined, the durable workhorses of their respective chosen chambers serving on the JCAR in recognition of its strategic location as a committee of influence.

3.4.2 The Legislature

In what ways is this legislature as an institution served by the arrangements which have been described here and in Chapter 1? First, by

ensuring administrative rule conformity to statute, the committee's review allows the legislature to continue to write statutes at a lower level of detail than would otherwise be necessary in order to accomplish policy objectives. This alone is a substantial contribution to institutional productivity and efficiency. Second, by considering the likely impacts of proposed rules and seeking to lessen them to the degree possible, the committee seeks to make state government less onerous on the people than might otherwise be the case. To the degree that it is successful, it lessens citizen complaints and probably enhances re-election prospects for all legislators.

The JCAR may also serve the legislature in a less obvious way by providing a check on its own decision making processes. While the committee has had members representing a broad range of political opinion over the years, mean opinion among JCAR members is probably somewhat more conservative than is the case for the state legislature as a whole. Committee members, other legislators, agency personnel, and interest group representatives alike agreed with this assessment, frequently even volunteering it. Most saw it as "natural". If the legislature as an institution wants effective oversight of administrative rules, then it must assign that responsibility to persons who have some skepticism concerning regulation. Asked why that function could not be provided by the standing committees, several respondents replied that those committees were known by everyone to be "stacked" by

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33. This was in addition to the problem, already cited, of old statutes in which current standing committee members had no interest, and standing committee members' general lack of knowledge of administrative processes.

supporters of certain interests.[33] The implication was that the legislature looked to the JCAR as something of a check on the standing committees as well as the agencies and interest groups.

Finally, the committee serves as a centralized bastion enhancing the legislature's ability to fend off the constant forays of the bureaucracy into the legislative, policy-making arena. The bureaucrats' guerilla tactics of old are well known and oft-discussed: losing a regulatory fight in the legislative arena, the desired bureaucratic objective would come back buried in twenty pages of rules. Being well versed in this lore, the members of the JCAR can be on the lookout for every such incursion into legislative authority and vigorously protect it from outlanders. As such, these hardworking warriors win a certain amount of recognition and respect from their colleagues for putting up with the detail most of them are perfectly happy to avoid. Tongue in cheek as this may be, it captures a certain underlying flavor of the Michigan review process. There is a competition, a tension, between the branches of government, a certain "we/they" attitude which colors the enterprise and affects committee deliberations.

3.4.3 Staff Roles

Staff Role Overview. JCAR members serve a variety of roles and perform a number of functions as legislators, in addition to running for re-election every two or four years. Responsible legislative review of administrative rules is not easy. Although some rules are as short as one paragraph and as relatively simple a matter as regulating motor boat

speeds during certain times of day on a single 50-acre lake, others can range into the dozens of pages and deal with very complex subject matters. Staff support can greatly increase the efficient use of legislator time by identifying key issues and by culling out rules of district or other special concern. Staff members can advise legislators of related constituent complaints. They may discuss issues with department personnel and affected groups and individuals, providing legislators information which will help clarify the consequences of a rule, especially as it relates to important constituency groups. They may advise them of developing controversy, and even contact potential supporters or opponents of the rule for testimony. And finally, but not necessarily least, as one legislator commented with gratitude, they can make legislators look good by providing relevant questions to ask when departments present their cases before the JCAR.

There are at least three sets of legislative staff potentially influential in the decisions of the Joint Committee on Administrative Rules. They include 1)staff hired directly by the joint committee; 2) minority party caucus staff; and 3) individual legislators' staff. These people serve as information filters in a variety of ways.

Joint Committee Staff. In addition to common staff responsibilities of maintaining records and communications, JCAR staff also have explicit responsibilities relative to agency hearings and rule analysis. The APA requires the agencies to hold public hearings on proposed rules. According to the JCAR's annual reports, JCAR professional staff members attend these meetings on a "random" basis. In practice, however, they usually attend only hearings conducted in Lansing, the state capitol. In addition, staff members report they are more likely to go to hearings

of agencies they have "had trouble with" in the past. Attendance gives the staff direct information regarding public reaction to specific rules and at least some direct check on the agency's notice and hearing procedures.

As noted earlier, there are three statutory bases for evaluating the content of a proposed rule: conformity to statute, expediency, and predicted fiscal impacts. In addition, the process by which the rule was developed is itself evaluated. Attention is given to the question of whether the agency has complied with all procedural requirements, both generalized (APA based) and specific(unique to the rule's authorizing statute). These are all areas potentially incorporated by JCAR staff into the rule analysis they prepare for committee members.[34]

JCAR staff both formally evaluate and informally advise. Attendance at the required department-sponsored hearings and contacts from agency and interest group personnel give the staff forewarning of most rules which will be contested by other participants when heard by the committee. This knowledge is passed to the chairperson and other committee members, specifically preparing them for some of the more difficult issues. The latter is an especially important staff role.

The JCAR legislators evidence a strong dislike for unanticipated controversy. They recognize that some controversy is unavoidable, but

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34. The report of that analysis effectively, although not formally, constitutes a staff recommendation. Staff members insist they present an analysis, not a recommendation. No one was able to offer an example of an approved rule which had not received a favorable staff review. Neither did a random sampling of committee records indicate this having happened. Note, however, that while staff approval may be operationally necessary for rule approval it is neither formally necessary nor sufficient.

want to be forewarned. This appears to be simple risk aversion. If caught unaware, they may appear uninformed, make statements which will later cause them difficulties, or commit themselves to action which proves troublesome. They much prefer to have time to work out a position and prepare a response. Good staff support is essential in this regard.

Minority Party Caucus Staff. The joint committee staff, although preparing and distributing information to all members of the committee, is regarded by minority party committee members as majority party staff. Indeed, Democrats controlled the hiring of JCAR staff from the beginning of systematic review in 1972 through 1984. Republicans frequently invested in additional staff.

Senate Republicans for several years had a central caucus staff member who regularly reviewed proposed rules. The review was similar to that provided by the JCAR staff in that statutory authority was the first check point. If a rule passed that standard, implementation issues were looked at. Republican staffers are, perhaps, more likely to additionally focus on the question of whether there might be a less burdensome or intrusive method of implementing the policy. Was this the best way to implement the rule? Would it give the state agency too much power, or more than necessary to implement the statute?

The Senate Republican staffer was frequently another of the contact points for departments working their rules through the system. Concerns raised by this person could sometimes be resolved even before they were conveyed to the senators; if not, at least the agency knew what questions they were likely to raise during the JCAR hearings.

House Republicans approached the rules process differently. For

most of this time, central staff was assigned by subject area and rule review was divided accordingly. In the judgement of several people close to the process, the result was a lack of understanding of the rules process and very little attention to rules. House minority members generally lacked the second staff review provided Senate minority members.

Legislator Staff. The other main staff support for JCAR members was through their individual staff positions. First-term House members were provided one secretary; second-termers or committee chairpersons, one aide and one secretary. Representatives chairing the largest committees (e.g., appropriations, judiciary, taxation) would, in addition, have attorneys as part of their staff.[35] Majority party senators were allowed five full-time positions, minority party senators got three.[36] A few JCAR members have assigned a staff member the responsibility of reading and commenting upon all rules; others rely much more on the Joint Committee staff. Probably most common is for personal staff to review rules concerning an area of special interest to the legislator--all agriculture rules, for instance, or anything particularly affecting cities. While findings are generally given only to a single legislator, they are important. This is especially true because of the tendency of committee members to defer to district-based concerns raised by another member.

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35. Central staff included an additional six committee aides/clerks shared by the 13 House committees, a central research staff, and public affairs and communications personnel.

36. Senate staff included an additional eight general counsel positions, plus 37 positions for the majority caucus and 26 for the minority caucus and 3 to 4 additional people on hourly pay.

Summary. JCAR, minority party, and individual legislator staff members all serve as collectors, filters, monitors, and transmitters of information important to the rule review process. As such, they are themselves an important element of the rules review structure in the state of Michigan. At the same time, from an electoral persepctive, good staff support can increase the legislator's review efficiency and greatly reduce the uncertainty attendant to the review process and decisions, thereby increasing legislator benefits. A structure with less staff support would seemingly be both less efficient and less productive, and probably more risky.

3.5 Summary

This chapter has shown that Michigan engages in substantial rule oversight, with over 150 transmittals a year processed by the legislature. Review activity and authority are highly centralized, located in the Joint Committee on Administrative Rules. The process is seemingly as open as any other government decision making process, perhaps more so than some. The committee appears to jealously guard the public's right to participate in the rule development and review process, partially out of its own competitive relationship with the executive branch.

Several hypotheses regarding structure and oversight outcome were tested. The evidence provided strong support for the argument that structure makes a difference. In each case, more stringent oversight

mechanisms--reverse as opposed to negative veto, concurring versus simple majority decision rules, and longer versus shorter review periods--resulted in lower rates of approval for adminstrative rule transmittals.

The evidence was also quite clear that legislatures and legislators can and will make substantial investments in the legislative process. The Michigan legislature has made substantial institutional investments of staff, time, seniority, and number of members in the oversight process. Enough senior individual legislators have chosen the committee over other assignments that the committee mean terms of service exceed chamber means and approximate or surpass those of their respective appropriations committees. Moreover, seniority increased with increases in committee authority.

These results suggest a strong interaction between structure and incentive. The presence of a highly centralized committee with substantive authority which surpasses that of virtually every other legislative committee and substantial support appears to have attracted senior members who then invest the personal resources necessary for successful legislative oversight. The system is operating in such a fashion as to maximize benefits while minimizing attendant uncertainties. In the process, it supports the theory that there is value in more direct, overt, oversight. Contrary to the "runaway bureaucrat" theory, Michigan legislators seem clearly to have found it worthwhile to invest greater resources in the oversight of the development of administrative rules. Neither do the results support the legislative "capture" theory; not only are rule approval rates nowhere near 100%, they have declined over time. Bureaucrats appear indeed to

have been pursuing their own goals; greater legislative investment in oversight of the administrative rules process has resulted in modification of a significant proportion of bureaucratic proposals. From the legislative perspective, the result is at least partially "constrained" bureaucrats.

Chapter 4

The Executive Branch

Executive branch perspectives on the issue of legislative oversight of administrative rules differ greatly from those of the legislative branch. Legislators see the right to monitor the application of delegated authority; governors and bureaucrats see an intrusion into executive authority—a violation of the separation of powers between branches of government, counterproductive limitation on administrative flexibility, the application of political values in areas which require technical expertise, and unnecessary delay.

This chapter shows how executive branch actors have responded to and participated in the legislative review process and various ways in which they try to manage that process while minimizing intrusion and uncertainty. It works from the general hypothesis that departments will choose strategies which reduce uncertainty and maximize rule approval.

Departments vary considerably in the extent to which they are involved in rules promulgation, in the degree to which they comply with the Administrative Procedures Act, the types of benefits which they have to offer to legislators and other actors in the system, and the amount of controversy associated with the rules for which they are responsible.

4.1 Bureaucrats in a Rational Choice World—Expertise and Negotiation

Michigan's legislative review complicates the life of the bureaucrat involved in rules promulgation. Factors beyond the technical merit of the proposal become important. Bureaucrats are questioned by the joint committee on the extent to which they have involved those to be regulated and are required to document the controversy they have encountered. Under Michigan's rules oversight provisions, if the rule stirs controversy, bureaucrats face disapproval of their rule if they do not become negotiators.

Department personnel at several levels are involved in the rulemaking process, but rulemaking activity generally follows the common hierarchical bureaucratic pattern. Noncontroversial rules are handled at a fairly low level. The greater the difficulty in resolving a rule controversy, the higher it rises through the administrative structure, sometimes involving a director's office, more rarely, the governor's office.

Drafting of rules and primary contacts with advisory groups and regularly participating groups are generally the responsibility of lower level personnel. These are also usually the people who receive public testimony at the required department hearings and who initially present their department's case at the hearings before the JCAR. Still, rules receive considerable attention from upper level officials. Department directors monitor progress of rules and are required to sign them before they are sent to the Joint Committee. A rule that elicits controversy

may well trigger action from the department director's office. One former director of the state Department of Labor, for instance, estimated he had personally taken action on one-fourth of the department's rules proposals.[1] Directors do, although rarely, testify at Joint Committee meetings, and may also use their influence with members of advisory or policy-making boards whose approval may also be required.

Considerable amounts of staff time can be involved in drafting proposed rules, preparing for and conducting public hearings on the rules proposal, and consulting with interest group representatives and legislators prior to Joint Committee action. Having to repeat any of these steps is costly, and thus, in the administrator's eye, to be avoided if possible. Administrators think about these costs in very concrete fashion. Said one agency representative of a disapproved rule: "Well, that just cost the taxpayers $15,000."[2] Another department representative reported that publishing notices of hearings for a single rule cost $9,000.[3] There is substantial incentive for the bureaucrat to get it right the first time.

There are various ways in which bureaucrats may attempt to manage the oversight environment. Process strategies may include the timing of agency transmittals, mobilization of support resources, invoking outside

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1. William E. Long, former director, Michigan State Department of Labor, interview, Lansing, Michigan, July 18, 1984.

2. Gregory Lyman, Deputy Director, Department of Natural Resources, exiting a meeting of the Joint Committee on Administrative Rules, Lansing, Michigan, February 7, 1984.

3. Dennis Hall, in-charge, Special Lands Program Section, interview, Lansing, Michigan, July 12, 1984.

authority, using the unacceptability of the status quo as a lever to gain acceptance of an otherwise unacceptable rule, making incremental changes which cumulatively result in much greater change, using emergency rules as a "trial balloon," etc.

Allocational strategies, in this context, involve bureaucratic decisions relative to the content of rules which specifically provide benefits to legislators serving on the Joint Committee. Arnold analyzed decisions agencies made regarding district military employment, water and sewer grants, and Model Cities grants for their relationship to program and appropriations support. Within the rules context, however, agency strategizing of this type need not be restricted to district benefits. The joint committee reviews rules dealing with all aspects of state government policy making and its members are potentially targets of interest group support or opposition from other than those "natural" to their geographic districts. It is possible for JCAR members to develop both geographic and interest group constituencies. Administrative strategies could include benefits targetted to either.

Talking about strategies implies several things about bureaucrats and their environment. First, it assumes bureaucrats can distinguish between factors contributing to and those detracting from a favorable JCAR vote. Second, it assumes that bureaucrats have some control over these factors. Third, there is an assumption of an incentive structure which somehow relates approval rates to rewards. If each of these things occurs, one might expect department success rates to improve over time, i.e., to show an increase in JCAR approvals, given fulfillment of the ceteris paribus assumption. For it to hold in this case, decision rules must remain the same; the level of controversy associated with the

issues must remain approximately stable (although specific content may vary considerably); and either JCAR membership and staff, agency staff, and interest group personnel and balance must remain stable or changes in these factors must be without systematic effect on outcomes.

A lack of increased approval rates over time could be interpreted in several ways. The most obvious conclusion is that bureaucratic learning does not take place in the rules promulgation process. Bureaucrats may be unable to distinguish between factors favoring approval and those which hinder such an outcome, perhaps because department personnel change too frequently, or possibly because their universe is truly random. Either would violate the first assumption. On the other hand, they may clearly perceive patterns and factors in the process but lack the means to influence them. Under these circumstances, the second condition would fail.

The third assumption would be violated if the reward system does not act—either by department, agency, or individual—upon information relating to rules success. These activities may be so rare or such a small part of total workloads that they are given little weight in any reward structures.[4] As will be shown shortly (see Table 4.1), seven of the twenty departments had less than one transmittal per year over the twelve-year period. The importance attached by these or other departments to the success of rules transmittals remains to be seen. Obviously, the departments must meet certain legislative demands in

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4. There is also the possibility that agencies feel they have to "give a few" to the joint committee, i.e., that the JCAR has to require a few changes from time to time if it is to justify its existence. If that is the case, this would further reduce the relationship between approval rates and rewards.

providing the means for implementing law. Where rules already exist, however, the status quo continues to operate if the proposed rule is withdrawn or approved. This would seem to lessen both internal and external pressure for rules approval as compared to areas in which there were no rules at all.

Hypothesis 8: Approval rates will vary by department.

This simple hypothesis offers a starting point for investigation of differences between departments as a tool in understanding factors potentially influencing outcomes. If departments experience equal success in winning approval for their proposed rules, examination of any one department should be sufficient to understanding of agency-controlled factors affecting outcomes. If approval rates differ between departments, then a broader range of analysis is required.

Outcomes do vary by department. As shown in Table 4.1, rates of approval range from 64.5% to 100.0%. There is also considerable difference by department in the number of rules submitted. Seven departments, accounting for only 1.2% of all cases, averaged less than one transmittal per year over the eleven years. Two other departments—Labor and Natural Resources—accounted for nearly half of all transmittals (49.6%) and averaged more than two a month.

Table 4.1. Total Transmittals and Overall Approval Rates, by Department and Frequency, 1972-1982.

Department	Transmittals N	Transmittals %	Per Cent Approved
Less than 1 per year (7):			
Civil Service	1	(0.1)	100.0
Executive	1	(0.1)	100.0
Attorney General	2	(0.1)	100.0
Civil Rights	2	(0.1)	50.0
Military Affairs	2	(0.1)	100.0
Corrections	5	(0.3)	60.0
Mental Health	7	(0.4)	87.6
1-6 per year (7):			
Transportation	18	(1.1)	77.8
Treasury	24	(1.5)	75.0
Management and Budget	29	(1.8)	69.4
State Police	37	(2.3)	70.3
State	38	(2.4)	73.3
Social Services	48	(3.0)	64.5
Education	69	(4.3)	86.9
7-12 per year (2):			
Agriculture	87	(5.4)	87.4
Public Health	105	(6.5)	67.6
13-24 per year (2):			
Commerce	154	(9.5)	79.5
Licensing and Regulation	185	(11.4)	73.0
More than 24 per year (2):			
Labor	285	(17.6)	85.3
Natural Resources	518	(32.0)	87.4
Total (all departments)	1617	(100.0)	
Mean (all departments)			80.7

Does the overall correlation between veto rule and outcome hold at the department level? Table 4.2 shows rates of approval for ten of the departments most frequently submitting rules.

Table 4.2. Department Approval Rates by Time Period and Change Between.

Department	Negative Veto (1972-1977) N	% appv.	Reverse Veto (1978-1982) N	% appv.	Change in percent btwn periods
Agriculture	43	93.3	42	81.0	- 12.3
Commerce	60	81.7	94	76.6	- 5.1
Education	40	97.5	29	72.4	- 25.1
Labor	165	87.3	99	82.8	- 4.5
Licensing & Regulation	71	76.1	114	71.7	- 4.4
Natural Resources	91	91.2	80	80.0	- 11.2
Public Health	42	83.3	63	57.1	- 26.2
Social Services	20	70.0	28	57.1	- 12.9
State	15	80.0	23	60.9	- 19.1
Treasury	10	90.0	14	64.3	- 25.7
Total—ten depts.	557	86.0	586	74.6	- 12.6

*Includes all departments averaging seven or more cases per year, plus those with 1-6 cases per year and 10 or more cases in each time period.

In every case in Table 4.2, approval rates drop between veto periods. The differences are not uniform, however. They range from less than five points in the case of the Department of Labor, to more than twenty-five for Education, Public Health, and Treasury. While there seems to be a clear systematic effect, there appear also to be department specific factors influencing outcomes.

Although approval rates dropped between time periods it is still possible they could increase within time periods, i.e., possible that bureaucrats would improve success after adjusting to a specific set of review parameters. This is not generally the case. The most common finding is decline of approval rates, even within time periods. A few

departments maintain relatively stable approval rates. Only two show positive trends within time periods: the Department of Social Services in both periods, and the Department of Natural Resources in the reverse veto period (non-local cases only). (See Appendix B.) Those cases will be discussed separately later in this chapter.

This is not to say that experience has no value. Grouping the data on the basis of the frequency with which departments submit rules shows some evidence that departments with the greatest number of transmittals enjoy higher success rates.

In Table 4.3, the only systematic difference across groups within the overall data is the substantially higher success rate (89.9%) of the greatest frequency group as compared to those of the other four (73.8% to 76.6%). Looking at the data within veto periods reveals something different, however. Under the negative veto, from 1972-1977, when effective negative action was much more difficult for the JCAR, there is no systematic difference across frequency groups. The range is from 79.0% approval to 91.7%, but the extreme values occur in the two highest categories; approval rates for the three lower frequency groups lie between these values.

With the change to the reverse veto and the greater ease of effective negative JCAR action, the picture changes considerably. Approval rates for the four groups with the least transmittal experience range from 63.2% to 70.7%; for the two departments with more than twenty-four transmittals per year, the rate is 86.9%. In addition, although all approval rates drop between time periods, the difference is much greater for those groups with fewer transmittals. It appears that departments more frequently submitting proposals somehow utilize either

experience or some other resource in such a way as to disproportionately enhance their effectiveness.

Table 4.3. Outcomes Aggregated by Average Frequency of Transmittals by Department, 1972-1982, and by Veto Period.[a]

	Average N of Transmittals Per Year					
	LT 1	1-6	7-12	13-24	GT 24	Total
Overall (1972-1982):						
% approved	75.0	73.8	76.6	74.3	89.9	80.7
(# submitted)	(20)	(263)	(192)	(487)	(655)	(1617)
Negative Veto (1972-1977):						
% approved	81.8	88.3	88.5	79.0	91.7	87.5
(# submitted)	(11)	(111)	(87)	(214)	(410)	(833)
Reverse Veto (1978-1982):						
% approved	66.7	63.2	66.7	70.7	86.9	73.5
(# submitted)	(9)	(152)	(105)	(273)	(245)	(784)
Change:	-15.1	-25.1	-21.8	-8.3	-4.8	-13.8

[a]For departments within categories and their individual totals, see Table 4.1.

This is in keeping with Bruff and Gellhorn's finding that agencies submitting rules for programs which encountered periodic review were likely to be more successful than agencies submitting rules which had to be promulgated only once. If legislators believe they have only one opportunity to raise objections or take corrective action, they will be less inclined to be lenient or negotiate than in the case where there will be frequent other contacts on the same program. Obviously, there is more opportunity for this when a department is submitting twenty proposals a year than in the case where they submit only one.

Individual departments differ greatly in rulemaking success, as previously shown (see Tables 4.1 and 4.2.) The data suggest that, rather

than using strategies to improve their success rates, departments must work hard even to maintain current rates.

Virtually every respondent who had an opinion about the reason for the change to the requirement of prior legislative approval cited the timing of agency rules transmittals as the cause. The Joint Committee's own report (1978) gives this explanation.[5] In addition, several writers in legislative/executive relations or state government mention this as an administrative strategy. Such a strategy rests on the assumption that rules received near the end of a regular session or during the interim will not be acted upon or will be given only a cursory review, thus taking effect with a minimum of legislative interference; it also requires that rules can take effect without winning prior legislative approval.

In the first time period, under negative veto, rules filed the month before the recess could take effect in one of three ways: 1) approval by the committee prior to the legislative recess, 2) approval by the committee at a special summer meeting, or 3) automatic approval as a result of no committee action. If departments were using late transmittal as a deliberate strategy during this period, they were slow about it. Table 4.4 shows that for the first five of the six years (1972-1975), the proportion of transmittals in the month immediately preceding the summer recess was below the expected rate of 8.33%

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5. "There were many instances where state agencies would submit rules to the Committee toward the close of session at a time when the Committee would not have an adequate opportunity to review the rules. Often state agencies would refuse to withdraw their rules to give the Committee this opportunity . . . . [This] caused most Committee members to support Senate Bill 609 of 1976." "Report of the Joint Committee on Administrative Rules," 1978, State of Michigan, p.6.

(one-twelfth of a year). But in 1976, the proportion of rules submitted in that month jumped to 17.4%, and in 1977 was still at 10.9%. I doubt that legislators had these kinds of statistics. More likely, what they had was increased pressure in dealing with rules and, quite possibly, a growing resentment against what appeared to be a deliberate tactic to keep them from properly carrying out a legitimate duty. The bulge in pre-recess transmittals may indeed have been a factor precipitating the change requiring prior legislative approval of rules.

Table 4.4. Per Cent of Rules Transmittals Received by JCAR in Month Prior to Summer Legislative Recess, by Year.

Year	Annual Transmittals	Transmitted During Month Prior to Recess: N	% of total[a]
Negative Veto (1972-1977):			
1972	90	7	7.8
1973	131	8	6.1
1974	176	13	7.4
1975	135	10	7.7
1976	172	30	17.4
1977	129	14	10.9
Period Total, %	833	82	9.8
Reverse Veto (1978-1982):			
1978	162	21	13.0
1979	157	15	9.6
1980	158	18	11.4
1981	166	23	13.9
1982	141	22	15.6
Period Total, %	784	99	12.3

[a]Expected value is 8.3% (one-twelfth of a year.)

In the second time period, rules no longer took effect if the committee failed to act—prior approval was required. Here, strategic behavior is less clear. Sending late transmittals to the committee under these conditions could be counter-productive if the committee

failed to meet early enough in the recess to consider such rules prior to the expiration of the allowed review period. On the other hand, it could have benefits. If there were some demonstrable urgency about the rules, the committee might agree to take them up, but give them only superficial scrutiny.

Sixty-six rules which were under consideration at special summer meetings or at the first meeting after the summer recess under reverse veto; fifty (75.8%) were approved, fourteen (21.2%) were withdrawn, and two (3.0%) were disapproved. Thus, outcomes for the pre-recess month during these years vary little from outcomes over the entire period (73.5% approved; 22.8% withdrawn; 3.7% other--see Table 3.4, p. 80.) While legislators may have felt cramped by the number of rules transmittals sent to them near the close of session, it appears at least on a statistical basis to have had no significant impact on outcomes.

There are probably several reasons why the strategic timing of rules presentation is not a more successful tool for Michigan administrators. First, Michigan has an essentially year-round legislature.[6] There are ample opportunities for the legislature, whether through the Joint Committee on Administrative Rules or elsewhere, to discipline an agency which would blatently use such a device. Second, the review committee is allowed sixty days in which to act and may vote to extend that an additional thirty days. This allows the committee a fair degree of flexibility and reduces the time pressure the departments can exert. If agencies did adopt a strategy of aiming

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6. Summer legislative recesses for 1972-1977 averaged 64.7 days; during 1978-1982, they averaged 69.6. Source: Journal of the Senate, State of Michigan, editions 1972-1982.

for that narrow "window" in the legislative calendar when the entire legislature might not sit for sixty days, the JCAR still is empowered to act during the legislative interim, and does so. Moreover, should the JCAR fail to act under the current reverse veto provisions, the rule would die for lack of approval. When asked about the possibility of strategic timing, several administrators said they would not dare engage in such activity.

On the other hand, departments can and do directly mobilize support for rules they have pending before the Joint Committee. A first step in mobilizing such support is maintaining positive relationships with as many involved as possible. Departments do this in a general way through regular provision of services to regulated groups, through the lists they maintain (by law) for the notification of hearings, through public information campaigns and general public service. More specific actions are triggered by specific pending rules. In some cases, the law requires the department to create an advisory group for the promulgation of implementing rules or even the periodic review of existing rules. In other cases, there may be existing groups which by tradition, law, or good politics are involved early in the drafting or negotiation of a proposed rule.

Cooperative relationships established in earlier stages may become critical to rule approval by the JCAR. This is particularly true for a rule to which there has been opposition; even more so if the rule has been withdrawn and resubmitted. In the eight months in which I observed the committee there were a number of occasions on which persons who had testified earlier in opposition to a rule later returned to testify in support of the revised language. People would make a 200-mile round

trip or more to say only: "I've met with the department and I'm satisfied. I support the rule."

What are the dynamics supporting such a system? Certain benefits are available through departmental services or programs. Certain benefits are desired by the members of the public testifying. Legislators on the committee are reluctant to commit themselves to a vote on a rule as long as there is reconcilable conflict and time to do something about it. A person testifying earlier in opposition to a rule is apparently considered by the committee to be continuing in opposition until it is told differently. In testifying against a rule, the person makes known a specific goal, presumably one not being provided for in the rule as proposed. In later testifying <u>for</u> the rule, the person implicitly confirms certain (frequently unstated) compromises and aids the department's ability to achieve the now-mutual goal. Each participant needs the other once an issue has been publicly raised at the JCAR level.

Several agency administrators explicitly stated their dislike of surprises in the JCAR hearing setting. They at least want the issues, participants, and positions identified by that stage. They would prefer not to take a rule before the committee without "having their ducks in order"--no opposition remaining, and an adequate show of support. This is not always possible. In the event that a rule is necessary but conflict seems unavoidable, they will go to individual members of the committee, explain the issues and problems, why the rule is needed, and where opposition is likely to come from and why. Administrators who do not do this and "lose" a rule before the JCAR are described by other actors as not having done their homework.

Losing a rule through failure to anticipate legislative objections costs more than the $9,000 for publishing of new hearing notices. It can also require a major investment in staff time. After losing a rule as a result of an unanticipated concern raised by a single member of the committee, one assistant division chief and the policy coordinator for his department contacted all members of the committee individually, discussing the areas outlined above. In addition, since that rule disapproval was so unanticipated, the decision was made to routinely shepherd in the same fashion all rules pending before the committee for awhile to make sure it did not happen again.[7]

Yet another department strategy is to invoke outside sources of authority as the basis for specific rule language. The Attorney General's office or the Legislative Service Bureau could be and often were cited as the basis for specific content. The attorney general or the Bureau could be and were cited as the reason for writing a rule in a certain way. For many years, the same was true of federal statutes and authorities. Now the departments are finding this a less productive strategy. The JCAR is challenging claims of requirements emanating from these sources. A representative of the Service Bureau and an assistant attorney general now are required to attend all meetings of the JCAR and may be called upon to substantiate any claim made to their authority. In addition, departments are required to document any claim made

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7. Gregory Lyman, Policy Coordinator, Michigan Department of Natural Resources, interview, Lansing, Michigan, March 3, 1984.

regarding federal language being incorporated into or otherwise serving as the base of a proposed Michigan rule.[8]

In addition, although difficult to assess, sequential incremental rules changes may be used as a device for accomplishing cumulatively greater change. Certainly, there are particular sections of the administrative code which appear numerous times as the identifying code for rules proposals. An almost reverse strategy, with possibly the same long-term result, is represented by cases in which an unsuccessful rule proposal was split into smaller segments; JCAR approval granted for the noncontroversial sections, and the more difficult sections pursued separately.

A related strategy is to put a previously unsuccessful rule into a package of otherwise noncontroversial rules. While Joint Committee members tend to look extremely unfavorably upon such tactics, there are situations in which this may be acceptable. One of the more interesting such cases involved a definition of live birth, required by the new state public health code which took effect September 30, 1978. After several unsuccessful attempts to get a definition approved by the JCAR as a separate rule, it was finally, two years later, included in a rule listing a number of other definitions relating to vital records, and approved.[9] The JCAR counsel was fully advised regarding the inclusion of this particular definition within the nine-page rule document, as

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8. Several respondents agreed this resulted from objections to the tendency of some departments to substitute a Michigan "shall" for a federal "may", potentially a matter of substantial regulatory impact.

9. The case will be discussed in detail in Chapter 5, as an example of interest group participation.

were the members. The Department of Public Health administrator who had coordinated this activity was one who believed in doing "homework" with the Committee.[10]

The regulatory status quo is more than a static fall-back reference position for actors in the process. The departments have the power to manipulate the status quo through the emergency rule procedure. Lambert's example of the nuclear emergency preparedness rules is a case of precisely such activity.[11] He had two concerns: 1) that it was not really an emergency and 2) that the review committee inappropriately held up approval when the regular rule came before them. The case may demonstrate something more important, however. By rescinding an existing rule at the same time it had promulgated the emergency rule, the department forced the committee to consider any related proposed rule from the perspective of a new status quo. Lambert saw the case as an example of mutual abuse of the system; it might more productively be regarded as sophisticated agenda control maneuvering.

Using department approval rates assumes that departments are the appropriate unit of analysis for detecting evidence of bureaucratic learning and administrative strategies. This may be more so in some cases than in others. The state Department of Public Health, for instance, has adopted the strategy of highly centralizing the development of rules. This includes having a single high-ranking staff member responsible for assisting department sub-units in the drafting of

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10. George Van Amburg, State Registrar and former director, Michigan Department of Public Health, interview, Lansing, Michigan, July 16, 1984.

11. See Lambert, pp.128-131.

initial language, reviewing for consistency with other department rules, negotiations with the assistant Attorney General, publication of hearing notices, preparation of all documents for Legislative Service Bureau, Attorney General, and JCAR action, etc. This would appear to maximize, on a departmental basis, any learning going on within the subunits. Public Health is one of the larger departments, however. Not all departments have such a person, although all departments eventually clear their rules through their director's office. Despite this strategy, Public Health, working in a number of areas which have excited public controversy, still has trouble with its rules. Approval dropped from 80% under negative veto (1972-1977) to 57.7% under reverse veto (1978-1982). It was not enough to be well-organized.

4.2 Rule Withdrawal and Resubmittal: Effects on Outcomes

In Chapter 3, the role of controversy in delaying action was discussed. We will look here at what happens to rules which experience the greatest amount of delay in the review process—those which are withdrawn.

Administrators control the decision to withdraw, using this technique as a response to rules which experience controversy during JCAR hearings. Most withdrawn rules are resubmitted; many are eventually approved. Once again, though, overall outcomes are affected by the governing veto rule and the differing substantive impacts of minority opposition. (See Table 4.5.)

Under the negative veto, 72 cases (of an initial 748) were withdrawn after their first presentation to the JCAR. Sixty (83.5%) of those proposed rules eventually passed, with varying degrees of modification, most of them on the second attempt, but some only after the third or fourth transmittal. In twelve cases (16.6%), agency personnel gave up (in eight cases, after the first try; in four, after the second) and did not resubmit a rule which had received a negative hearing before the committee. Of the seven rules originally disapproved under negative veto, five (71.3%) subsequently won approval. The other two were not resubmitted. All three rules which were disapproved on their second try ultimately were approved in modified form. Of the rules eventually approved, 75.4% (49 of 65) made it on their second try; 21.5% on the third; and 3.1% on the fourth.

The ultimate approval overall of 65 of the 79 cases (of an initial 632) previously unsuccessful under the negative veto means that 82.3% of all such cases finally were allowed adoption in some form under the negative veto. Clearly, agency persistence paid off.

In the case of the reverse veto, forty-five (31.3%) of the rules originally withdrawn were dropped at some stage, although one not until after its fifth presentation to the committee. On the other hand, 68.7% (99 of 144) of rules originally withdrawn were eventually passed. Rules originally disapproved (including no action and impasse) fared far worse. Ten of the fifteen (66.7%) were never resubmitted even once; another (6.7%) was not resubmitted after a second unsuccessful attempt. Only three of the fifteen (20.0%) cases originally disapproved under reverse veto eventually won approval. The remaining case resulted in an impasse on its sixth appearance before the committee.

Table 4.5. Subsequent Outcomes of Rules Transmittals Originally Withdrawn or Otherwise not Passed by the JCAR, by Veto Period.[a]

Original outcome:[b] subsequent outcome	Outcome 2	Outcome 3	Outcome 4	Outcome 5	Outcome 6	Final Outcomes[c] N	%
Negative Veto: 1972-1977							
Withdrawn (n=72)							
Not resubmitted	8	4				12	16.7
Approved	45	13	2			60	83.3
Withdrawn	16	2					
Disapproved	3						
	(72)					(72)	(100.0)
Disapproved (n=7)							
Not resubmitted	2					2	28.6
Approved	4[d]	1				5	71.4
Withdrawn	1						
Disapproved	0						
	(7)					(7)	(100.0)
Reverse Veto: 1978-1982							
Withdrawn (n=144)							
Not resubmitted	28	9	7		1	45	31.3
Approved	85	11	3			99	68.7
Withdrawn	20	7	1	1			
Disapproved	11	4					
	(144)					(144)	(100.0)
Disapproved (n=15)							
Not resubmitted	10	1				11	73.3
Approved	3					3	20.0
Withdrawn	2	1	1	1			
Disapproved	0				1	1	6.7
	(15)					(15)	(100.0)

[a]Cases counted as "disapproved" in reverse veto period may include instances of impasse or "no action."

[b]Sum of cases withdrawn and disapproved in one column equal total cases in next column.

[c]Final disposition of cases in first column, regardless of number of times transmitted.

[d]Includes two sets of rules which took effect despite JCAR disapproval due to failure of the legislature to pass concurrent resolution of disapproval.

Overall, 56 transmittals (35.2%) unsuccessful under reverse veto were never resubmitted. Of those rules eventually approved, 86.3% (88 of 102) were approved on second presentation; 10.8% on the third; 2.9% on the fourth attempt. The eventual success rate for all previously unapproved cases here is 102 of 159, or 64.2%.

The outcome of initially unsuccessful rules differs, then, between time periods. Unsuccessful rules are much more likely never to be resubmitted under the reverse veto (35.2%) than is the case under the earlier negative veto rule (17.7%). Table 4.6 shows this to be a statistically significant difference ($p = .01$) of substantial strength (Yule's $Q = .421$).

Table 4.6. Incidence of Resubmittal after Unfavorable JCAR Action, by Time Period.[a]

	Negative Veto (1972-1977)		Reverse Veto (1978-1982)		Row Total	
	N	%	N	%	N	%
Resubmitted	65	(82.3)	103	(64.7)	168	(70.6)
Not resubmitted	14	(17.7)	56	(35.2)	70	(29.4)
Column Total	79		159		238	
%		(33.2)		(66.8)		(100.0)

$X^2 = 7.785$
$p = .01$
Yule's $Q = .421$

[a]Cell values taken from "final outcome" column of Table 4.5.

Administrators make the decision to resubmit a previously withdrawn rule. The lower likelihood of their choosing to do so under the reverse veto is one more indicator of the substantive impact of the change in the decision rule.

The fact that some rules are resubmitted, whether after a prior disapproval or withdrawal, and that at least some of them are approved

suggests one more measure of approval rate, an adjusted measure taking into account approvals as a proportion of "original cases." Calculated in this fashion, there were actually 748 cases between 1972 and 1977 (833 transmittals less the 85 which were resubmittals[12]) and 632 cases between 1978 and 1982 (784 transmittals less 152 resubmittals). Of these cases, 729 and 576 were eventually approved in some form. This yields adjusted approval rates of 97.46% and 91.14% for the two time periods.

The adjusted approval rates are considerably higher than their unadjusted counterparts. Approval goes from 87.5% to 97.5% under the negative veto, from 73.5% to 91.1% under the reverse veto. This only underlines the earlier finding that the most common outcome of review is approval. Legislative oversight of administrative rules may slow the bureaucracy but it does not paralyze it.

Administrators are not guaranteed approval of their proposals; if they were, there would be no reason to have oversight. Neither are they summarily dismissed from further consideration if their proposals receive an unfavorable first hearing. Negotiation and bargaining are regular and important aspects of the rule review process in the state of Michigan.

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12. The number of resubmittals includes all transmittals shown as other than "not resubmitted" in Table 4.5 "outcome" columns 2 - 6; n's exceed those in the "final outcome" column because some cases were resubmitted more than once.

4.3 Benefits, Publics, and Outcomes—Two Examples

Table 4.1 gave the approval rates for each of the departments of state government. The variation among them was considerable. This section looks at specific examples from two major departments handling very different kinds of rules and existing in quite distinct public environments. The departments are the Department of Natural Resources(DNR) and the Department of Social Services(DSS).

4.3.1 Department of Natural Resources

Given the level of controversy involved with environmental issues through the 1970s and into the 1980s, one might be surprised to find the Department of Natural Resources (DNR) with one of the highest overall approval rates. Arnold's distinction between local and general benefit policy may partially explain this outcome. Examination of the DNR cases reveals a set of rules accounting for almost three-fourths of DNR transmittals during this time which dealt with local control of boating (on individual small lake, river areas) or of hunting and firearms use in small (typically sub-township) areas. These transmittals had an approval rate of 94.0%. (See Table 4.7.)

Table 4.7. Outcome of Department of Natural Resources Rules Transmittals by Type of Rule, 1972-1982.

	Type of Rule				Row Total	
	Hunting/Watercraft		Other			
	N	%	N	%	N	%
Approved	346	(94.0)	96	(69.6)	442	(87.4)
Other	22	(6.0)	42	(30.4)	64	(12.6)
Column N	368		138		506	
%		(72.7)		(27.3)		(100.0)

$X^2 = 55.02$
$p = .001$
Yule's Q = .746

The hunting and watercraft rules are undoubtedly the simplest example of local benefit cases in the Michigan rules system. The DNR has such cases in most of the state's counties over time, and is able to serve legislators and local interests alike by helping local groups reach consensus on these controls. The request for the rules is usually triggered by a situation of increasing traffic on a lake or substantial new building in an area which has been previously used for hunting. These rules are unusual in that the local unit of government votes on them before they are submitted to the JCAR.

These rules are generally regarded as noncontroversial but they are not necessarily so. Opposition would most likely come from persons who are not permanent residents in either the hunting or water areas to be used. Unless they subscribe to a newspaper local to that area and read the legal notices they are unlikely to know the restrictions are being considered. Thus, the input which is likely to be received is in favor of the rule and directly related to a small, clearly delineated geographic constituency. Costs to the state DNR are only the expense of

local publication and those incurred in assigning one of it officers to the required meeting and perhaps one or two other meetings with local people. Posting of the restrictions is the responsibility of local officials, as is on-going enforcement in most cases. In the extremely rare event that opposition arises at the JCAR level, the department can alert the original petitioners, advising them of the need for their testimony at the appropriate committee meeting. These factors have combined to yield an approval rate on these rules of 94.0% for the eleven years. During the negative veto period, rates varied from 87 to 96 percent approval, with a mean of 95%; during the reverse veto period, they varied from 73 to 100 percent, with a 91% mean. (See Appendix B for annual data.)

The rules process is much more difficult for the DNR in many other areas of its responsibility. Here, overall rates of approval are only 69.6% (Table 4.7). The DNR non-local cases varied from 72 to 92 percent approvals during the negative veto period, with a mean of 80%, and 40 to 100% during the reverse veto period, with a mean of 60%. (See Appendix B for annual data—"DNRo".) Annual rates during the latter period showed steady improvement through the five year period, the only such case of all the departments. While this offers at least partial support for a theory of applied bureaucratic learning, the year in which there was a 100% approval rate is the one with the lowest number of rules submittals for the entire eleven year period. One might argue that what was learned was maximum possible avoidance.

The multiple attempts to revise Part 4 of the Water Quality Standards are an example of problems encountered in non-local policy areas.[13] In 1976, the department proposed revisions to rules which had been promulgated in 1973. Despite considerable public controversy they presented the rules five times in less than seven months to the JCAR in 1978-1979. Each time the rules were withdrawn for further work. It was only after the fifth withdrawal that the Water Resources Commission established an advisory task force to work with it on the rules.

The rules were intended to regulate point-source discharges of toxic materials into surface waters. Original controversy about the regulations was between an industry-related coalition led primarily by the Dow Chemical Company on the one hand and an assortment of environmental and public interest groups on the other. Industry wanted restrictions only on proven carcinogens; environmental groups preferred zero discharge of any substance which had not been certified harmless. During this time the groups in opposition were working separate from each other, each trying to use the various lobbying points to get its full preference enforced. Neither was successful; industry was faced with continuing regulatory uncertainty although still complying with the old rules, and the no-discharge interest groups knew that contaminated discharges were still occurring. The message from the Joint Committee had been clear—the groups had to reach a resolution themselves.

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13. Information for this section was obtained from Joint Committee records and interviews; interviews with department and interest group personnel; and from "Proposed Rule 57 Comments and Summary," Water Resources Commission, Michigan Department of Natural Resources, August 3, 1984—a 298-page record and summary of the 1984 hearings on the rules. For a review of the history of the rules, see pp.2-3 of the "Comments and Summary."

The advisory task force provided the first forum in which the opposing interests worked together. By June of 1980, a new package of rules was ready. These were transmitted to the state Water Resources Commission (WRC) for its approval, and then sent on to public hearings. Heavy controversy continued, despite the compromises which had been reached through the advisory group. The WRC decided to concentrate on one rule in the package—Rule 57, that portion defining allowable levels of discharge of industrial wastes into the surface waters.[14] It established a new advisory group solely for the purpose of reaching acceptable compromise on that rule.

Proposed Rule 57 revisions have oscillated from the very broad, with wide discretionary powers to the department in enforcement, to very specific language which would require little interpretation. One of the problems was to devise a rule which would simultaneously allow the department to regularly incorporate into its enforcement program the most current technical information without necessitating recurring rule revisions while also providing a workable level of regulatory certainty for the regulated industries and municipalities. After monthly meetings of the task force and staff, tentative resolution of the problem was presented to the WRC in December, 1982. General language was adopted with specific standards to guide application in different cases. It took it until November of 1984 before the rules were resubmitted to the JCAR. They were approved in December.

What had the state DNR done in the meantime regarding the discharge

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14. Called "Rule 57" on the basis of its administrative code number: R.323.1057.

of toxic substances into the state's waters? Department policy was quite straightforward. If there was a known carcinogen, even if it was not on the list included in the rules promulgated in 1973, it was be regulated--by guidelines or under the general authority of the existing Rule 57 language. According to the head of the department's representative to the Water Resources Commission there was no challenge to this system. People on both sides, he said, recognized we could not afford to randomly discharge carcinogens into the environment.[15] Participants were willing to recognize interim DNR authority even though they are unwilling to commit themselves to a new rule.

In a situation like this, the department faces well-organized, well-educated, opposing interests with resources to continue a battle over a period of years. Department personnel, both in public testimony and in private interviews, express recognition of and sometimes frustration at the dual publics in their environment—a public especially aware and supportive of high standards contrasted with the need of industry for regulatory certainty and competitive equality if not advantage.

Environmental regulation is a highly politicized arena in the state of Michigan. This is just as true for rulemaking as it is for legislation. What is particularly interesting here is the refusal of the Joint Committee to make the policy decision and approve a rule which lacked consensus. Contrary to Bruff and Gellhorn's concern about deals cut by the legislative rule-approving body, the committee returned the

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15. Dr. Dennis P. Tierney, Michigan Department of Natural Resources, interview, Lansing, Michigan, August, 13, 1984.

decision to the public. This is not merely an abdication to regulated groups, however. In this case, the participants included active advocates for a broader public interest. Nonetheless, it could legitimately be charged that the joint committee did not fulfill its responsibility. The APA does not require public support of a rule, it requires only that it be in conformity with the statute under which it was authorized. Clearly, the system has been responsive to constituent concerns, as Lyons and Thomas, Ethridge, and Lambert would predict, but in this case the result was long-delayed action. Political decision makers waited for a consensus preference which they could then endorse, suffering the least retribution possible.

In this situation, the Joint Committee members looked more like risk averse rational actors than they did Rosenthal's altruists or Fenno's good government types. Why suffer the consequences of making the decision? The generalized benefits provided by the DNR in this program totally lacked differential positive support for the legislators. There was nothing to trade.

4.3.2 Department of Social Services

The Department of Social Services (DSS) has one of the largest budgets in Michigan state government,[16] generally the greatest number of employees, relatively few rules, and twenty-one loose-leaf policy manuals. Respondents from the JCAR and its staff, from other

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16. Social Services was second only to Mental Health from 1972-1979 and was first from 1980-1982.

departments, and from interest groups all identified DSS as an agency often not in compliance with the state's APA. It was frequently mentioned as operating under guidelines rather than rules (a matter of controversy regardless of department). Explanations for this varied. Some respondents attributed it to the many requirements on the department which come from the federal level. Others saw it as a matter of professional orientations—professional "do-gooders" who feel no one else is qualified to tell them what to do. Still others analyzed failure to comply as a result of the public with which the department frequently deals. As one legislator saw it: "Those people don't know if they're rules, guidelines, or the Ten Commandments." One respondent thought the department had so much trouble getting rules approved in the past that they had just given up. These arguments have varying merit.

The federalism explanation is not sufficient. Many departments of state government have a high degree of federal involvement, whether in dollars or shared jurisdictions. Examples include, to varying degrees, the Departments of Natural Resources, Public and Mental Health, and Labor. Most respondents who originally cited the federal relationship as the explanation for the relative independence of the Department of Social Services recognized this similarity if questioned about it.

The "professional do-gooder" argument is more difficult to assess. On those occasions during my observation of the committee that DSS personnel testified, this attitude did not seem to be present, but one would assume the department would be careful in its choice of representatives for that forum.

On at least one occasion, a DSS representative specifically spoke in support of the review process. Appearing before the committee for

the third time on a transmittal completely updating the rules on children's camps, the assistant director of child welfare licensing stated: "This process works. I have really come to respect it."[17] The process he spoke of was a combination of specific statutory requirements and general APA requirements. The rules were promulgated under a statute requiring the department to create ad hoc advisory committees composed of representatives from the state agencies and the organizations affected by the act. Although there was strong support when the rules came before the JCAR, there were also several specific objections. The committee withheld approval until most of those objections had been resolved.[18] In this case, the DSS professional gave recognition to benefits of the negotiatory process; in other circumstances, without a required advisory committee and organized outside groups, attitudes and results might be different.

The majority of persons regulated by the Department of Social Services lack the kind of educational, informational, organizational, and economic resources utilized, for instance, by the camp operators in the previous example or by the state Chamber of Commerce in its systematic monitoring of rules promulgation and implementation. They also have a very different cost-benefit calculus and incentive structure. The individual welfare mother is unlikely to take on the

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17. David Fitzgerald, Assistant Director of Child Welfare Licensing, Michigan Department of Social Services, testimony before the Joint Committee on Administrative Rules, Lansing, Michigan, April 10, 1984.

18. After this third hearing, the rule was withdrawn, and a new rule transmitted, carrying all the modifications necessary to incorporate the compromises worked out in this latter stage. This resubmittal was approved almost immediatedly.

department, let alone a committee of the legislature which she probably does not know exists. On at least one occasion, however, the state Welfare Rights Organization(WRO) testified before the committee. The encounter apparently was unsatisfactory to both the organization and the joint committee. The JCAR's previous special counsel reported that the WRO criticized the committee for its 8:00 a.m. meeting time, saying it made it too difficult to attend. The committee chairperson reportedly responded that he got up at 4 a.m. to be there on time; they could too.[19]

There is outside evidence to suggest the person who thought current DSS noncompliance was a response to past lack of success may be right. Between 1972 and 1982, the Department of Social Services had the lowest overall rules approval rate of all the agencies.[20] Moreover, approvals dropped from 70.0% from 1972-1977 to only 57.1% from 1978-1982. Although I doubt the various departments have a precise measure of how the other departments are doing, and even lack such a measure for themselves, one suspects there may have been growing DSS frustration with the rules process. Critics of legislative review have frequently predicted administrative noncompliance as a response to legislative oversight which became too burdensome.

Annual approval rates for DSS provide additional support for this

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19. Kenneth E. Sanders, former special counsel to the Joint Committee on Administrative Rules, interview, Lansing, Michigan, September 30, 1984. The WRO complaint may have reflected problems with public transportation; if so, the committee interpreted it quite differently.

20. The only exceptions are two agencies who had such a small number of transmittals that they were discarded in much of the subsequent analysis: Civil Rights, with two rules, and Corrections, with five.

view. Social Services was the only department which showed increases of approval rates within both time periods. In each case, it finished in the last two years with 100% approval of rules transmittals. The findings parallel those of the earlier DNR example of improved approval rates, however. The 100% success rates were in years in which either one or two rules were submitted, fewer than in any of the earlier years in their respective time periods. (For full data, see Appendix B.) What may have been learned is to entirely avoid the review process for all but the most certain winners.

None of the explanations decisively account for why the Department of Social Services has been allowed by the legislature to so regularly skirt APA requirements while others, such as Natural Resources (with only a slightly higher 1978-82 approval rate for its non-local rules cases), follow it much more closely. It is my guess that it is a simple matter of lack of political incentives for such an exercise of legislative authority. DSS clients undoubtedly vote in much smaller proportion than do many other legislator constituent groups; they are also much less likely to render a complaint against "their" state agency than are teachers or automobile industry representatives, for instance. Even business interests, due to the need for regulatory certainty, lobby for environmental regulation. Lack of participation by DSS clients, in contrast, results in little threat of punishment for inaction and few rewards for action.

4.4 The Governor—A Major Actor?

The governor of Michigan is an elected official, and head of the executive branch. Legislative oversight of administrative rules poses problems for the governor in two ways: one, as protector of the executive branch from undue legislative assumptions of power; and two, as manager of the executive branch. If increasing legislative authority means a reduction in gubernatorial authority, it lowers the ability of the governor to manage, and reduces potential electoral benefits.

There is ample evidence that Michigan governors have been sensitive to legislative oversight of administrative rules as an issue in legislative and executive authority. There have been at least six related vetoes by four different governors. Vetoed legislation included attempts to require prior legislative approval of a specific rule[21] or of all rules,[22] or to delay and increase uncertainty in the implementation of rules[23]. In each case, the governor was trying to maintain existing executive control over the administrative rule-making

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21. Gov. John Swainson, 1962 ESB 1301, dealing with "vessels carrying passengers for hire," and requiring prior legislative approval of implementing rules.

22. Gov. Harry Kelly, 1943 SEA 69; Gov. Wm. Milliken, ESB 609, Jan. 18, 1977, and ESB 419, Aug. 5, 1977—all would have required prior legislative review of all administrative rules.

23. Gov. George Romney (by pocket veto), 1968 ESB 1374, requiring prior presentment to the Joint Committee on Administrative Rules, and Gov. Wm. Milliken, 1974 ESB 1064, suspending the 60 day review period limit when the legislature was in recess for more than 14 days.

process.

Management of the executive branch is difficult under any circumstances in Michigan. The governor has a limited executive authority. There are currently nineteen departments of state government. Two department heads (secretary of state and the attorney general) directly elected by the people. A third department (education) is directed by an independently elected board which, in turn, appoints the state superintendent of public instruction. Five more departments (agriculture, civil rights, civil service, corrections, and natural resources) are headed by gubernatorially appointed bi-partisan commissions serving staggered terms (some as long as eight years) which, in turn, appoint the department directors. Thus, the governor has direct control over only eleven of the nineteen department heads.[24] Even in these departments, control may be limited. There are many independent boards and commissions assigned to these departments for budget, personnel and other "housekeeping" services only.[25] Clearly, Michigan provides an example of Hamm and Robertson's "weak" executive.

As an elected official, incentives for gubernatorial involvement in the rules process are very similar to those discussed earlier for the

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24. These departments are Commerce, Labor, Licensing and Regulation, Management and Budget, Mental Health, Military Affairs, Public Health, Social Services, State Police, Transportation, and Treasury.

25. There are over 250 independent boards and commissions within Michigan state government, ranging from the State Accident Fund Advisory Board and State Board of Accountancy to the Board of Veterinary Medicine, Water Resources Commission, and the Workers' Compensation Appeal Board. See various editions of Elective and Appointive State Officers, State of Michigan, Department of Management and Budget, State of Michigan, and current update, available from the Office of the Governor.

legislators. There is no constitutional limit on the number of terms a Michigan governor may serve. Therefore, the electoral incentive has potentially as much force for the governor as for any state senator or representative.[26]

Administrative rules, in general, are not a first level concern for a governor. Attaining major legislative and budgetary goals undoubtedly has higher priority. We would expect rules likely to draw gubernatorial attention to include those on which there is substantial disagreement between the department and outside interests as to what ought to be done, particularly if one of those outside parties is a past or potential source of gubernatorial electoral support.

A group may take a rules concern to the governor's office, expecting pressure to then be applied on the department. A governor who can demonstrate executive control in such a situation may garner electoral support from the action's beneficiaries. There are possible drawbacks to such a scenario, though. It could result in minimum cooperation from agency personnel in the future, and it might produce opposition from interests who felt they had suffered as a consequence of gubernatorial intervention. If Fiorina is correct about interest groups liberally assessing blame but being stingy in granting credit, one would predict that the rational actor governor would prefer a rules promulgation system which runs smoothly at the department level without

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26. Michigan had only six governors in the forty years between passage in 1943 of its first Administrative Procedures Act and its most recent gubernatorial election, in 1982. Four of the six were re-elected at least once: Harry F. Kelly (1943-1946) and G. Mennen Williams (1949-1960) during the era of two-year terms, and George Romney (1963-1969) and Wm. G. Milliken (1969-1982) under four-year term provisions. Williams was a Democrat; the other three, Republicans.

requiring this type of intervention.

Nonetheless, there are times when the governor takes action on rules. Rules issues may become a part of a general reform package, part of a specific program advocated by the governor, or merely a small opportunity to assist a past or potential supporter. There are a number of ways beyond general advocacy of regulatory reform in which the governor might be involved in the rules promulgation and oversight process: 1) initiation of a rule change through an inquiry or request to an agency; 2) request that an agency consider certain factors or interests in preparing a rule; 3) involvement in negotiations between interest groups and agencies regarding rules content; and 4) intervention on behalf of agencies or those regulated as rules are under review by the JCAR.

Michigan's governors in general have not had a high level of involvement in the process, particularly at the point of legislative oversight. JCAR members and staff alike report very limited contact from the governor's office regarding rules transmittals. Both the current and a former head of the committee, for instance, reported very little pressure from the governor's office. Contacts regarding rules proposals were described as rare, "very discrete and tactful," and with no "improper involvement."[27] The typical approach was a quiet message that a specific rule coming before the committee was very important to the department, with the request to give it careful consideration.

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27. Rep. Michael Griffin, interview, Lansing, Michigan, January 4, 1984; former Rep. Thomas J. Anderson, interview, Lansing, Michigan, August 1, 1984. The language offers interesting insight into legislative perspectives on appropriate relations in this area between the branches of government.

Interviews with persons serving as legislative liaison to two different Michigan governors confirmed that departments are, in general, expected to manage their own battles in the promulgation of rules and their negotiation through JCAR approval. If a rule is perceived as essential, however, and is encountering problems, the legislative liaison may privately lobby members of the committee in an effort to increase support. Neither had ever publicly testified in support of a rule while on the governor's staff. This may represent, from the governor's perspective, a risk minimization strategy and is, perhaps, a source of what legislative actors are interpreting as "discreteness" in this context.

Agency personnel may make a large investment in a given rule proposal and develop a strong commitment to a certain language or approach. This can make it very difficult for them to accept changes suggested in public hearings. One former legislative liaison reported that word from the governor's office sometimes provided the support needed for a department director to get the needed changes in language from a recalcitrant underling. Such gubernatorial involvement had the added advantage of allowing the director to avoid taking personal responsibility for requiring bureau personnel to act against their own preferences.

The Michigan Administrative Procedures Act specifically provides for gubernatorial involvement in rules promulgation in two ways. First, it stipulates that once a rule has been approved (i.e., cleared by the Legislative Service Bureau, the Attorney General, and the Joint Committee on Administrative Rules) departments must present it to the governor's office at least ten days before filing it with the Secretary

of State. The governor is not required to sign or in any other way acknowledge the rule in order for it to take effect. Neither is the governor prohibited from instructing the department to withhold the rule from filing.[28] This has never occurred and the provision seems to operate solely as a communication device within the executive branch.[29]

The other APA language regarding gubernatorial involvement deals with a type of rulemaking which occurs outside of the processes discussed thus far. The Michigan APA provides for the promulgation of emergency rules. These rules, which may be promulgated for only a six-month period and renewed only once, do not go through the steps otherwise prescribed by the state's administrative procedures act. To promulgate an emergency rule requires only that: 1) the "agency finds that preservation of the public health, safety, or welfare requires the promulgation of an emergency rule without following the notice and participation procedures"[30]; 2) the agency states its reasons; 3) the governor certifies concurrence in the finding of an emergency; and, 4) the rule and supporting documents are filed with the secretary of state.

From the beginning of routine rule review in 1972 through the end of 1982, a total of 212 emergency rules received the governor's signature and were filed with the secretary of state. This represents

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28. The result would be for the rule not to take effect.

29. Capitol folklore has it that the provision is the result of an embarrassment suffered by former governor Romney. The governor had responded to someone complaining about a rule that the state had no such rule. He was incorrect; it had been filed the day before.

30. Michigan APA, section 24.248(1).

13.1% as many rules as those promulgated through the regular process during the same time period. (See Table 4.8.)

Table 4.8. Number of Emergency Rules and Regular Rules Filed, by Year, 1972-1982.

Year	Type of Rule: Emergency N	Type of Rule: Regular N	Proportion: Emergency/ Regular
1972	8	90	8.9
1973	11	131	8.4
1974	24	176	13.6
1975	24	135	17.8
1976	24	172	14.0
1977	21	129	16.3
1978	23	162	14.2
1979	29	157	18.5
1980	16	158	10.1
1981	24	166	14.5
1982	8	141	5.7
Totals	212	1617	13.1

Source for emergency rules: "Supplement to 1954 Michigan Administrative Code", Nos. 70-101 (1972-1980) and "Michigan Administrative Code 1979, Quarterly Supplement," Nos. 1-12 (1981-1982), compiled by the Legislative Service Bureau and published by the Department of Management and Budget, State of Michigan.

The requirements of Michigan's APA are such that it is extremely unlikely that a processed rule will be promulgated within a year of its initial drafting; most estimates are that it is more likely to require two years. An emergency rule may be a means of quickly implementing a new program while awaiting approval of regular rules. It may also provide covering authorization for existing rules which have an expiration date but which have encountered delay in reapproval through the regular rules processes. Emergency rules may be adopted to protect the state from imminent federal sanctions, including the loss of funds or federal enforcement of certain regulatory programs. They may also

reflect response to a newly discovered health hazard, such as in the PBB contamination case. Under these circumstances, outside observers might agree that an administrative "emergency" exists; it is less certain that the "preservation of the public health, safety, or welfare" is always involved.

On the other hand, an emergency rule may represent strategic department behavior, seeing how a rule "flies", perhaps acclimating a regulated group to a new level of regulation prior to having to submit it to legislative review. It may also be a device to rescind old rules, forcing the joint committee to consider a new rules proposal from a different status quo base than would otherwise be the case.

Most emergency rules do eventually become permanent rules. In the case of the Department of Labor, for instance, the department which filed 41 of the 212 rules (19.3%), all apparently became permanent rules.[31] Twenty-two of these 41 transmittals were actually the initial promulgation and extension of a single set of 11 rules filed in 1978 in response to federal Occupational Safety and Health Administration standards. The MIOSHA standards were made permanent in 1979.[32] Approval

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31. Emergency rules are not printed in the Administrative Code. The supplements to the code carry only a notice of the promulgation of an emergency rule, the dates effective, department and division responsible, a three or four word description of the subject matter, and an address from which a copy may be obtained. Nonetheless, cross-referencing these data with computer sorts of the information entered from the Joint Committee's "Daily Status Report" made it possible to track subsequent action on at least 95% of the emergency rule cases.

32. The rules dealt with safety standards for machine guards and devices, abrasive wheels, floor openings or platforms, fixed ladders, fire exits, overhead gantries and cranes, powered industrial trucks, hydraulic power presses, mechanical power presses, metalworking machinery, and woodworking machinery.

is not always easy, however. The Department of Public Health promulgated emergency rules relating to a definition of live birth, but it took four subsequent attempts over a three year period to get a permanent rule through the Joint Committee.

The departments vary greatly in the rate of emergency rules promulgation. In those first eleven years of routine rules review, among those departments filing at least five emergency rules, the proportion of emergency rules to regular rules varied from a low of 2.5% for the Department of Natural Resources, to 43.8% for the Department of Social Services, and a high of 71.4% for the Department of Mental Health.

To what degree is the governor in control of or involved in the emergency rule process? Four persons intimately involved with the process reported that the governor's activity is limited, but can be determinative when directed toward the agencies.[33] A former gubernatorial legislative liaison reported a point at which it seemed more and more emergency rules were being promulgated.[34] (See Table 4.8.) They began to scrutinize emergency rules more carefully, requiring

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33. Informants here included William E. Long, former director of the Michigan Department of Labor, and earlier, legislative liaison to former governor William G. Milliken; Larry Tokarski, legislative affairs director for current governor James J. Blanchard; Walter Wheeler, III, Chief of the Office of Legislative and Legal Affairs, Michigan Department of Health.

34. See Table 4.8. His service did, in fact, coincide with the peak year for emergency rules, 1979. Emergency rule promulgations have subsequently declined.

the departments to more fully justify their need and to explain why they had not used the regular rule-making process.[35] A current administrator serving as a clearing point for the last six years for all rules from his department cannot recall any case where the governor has refused to certify a rule. He reports his department makes very certain they have an emergency before approaching the governor's office for support.

Respondents reported several cases where the governor's interest had been very important in the promulgation of an emergency rule, e.g., transportation of nuclear wastes, and PCB contamination problems—two issues which received widespread public attention. In the latter case, the governor appointed his chief of staff to coordinate and monitor departmental responses to and resolution of the problem. There were no examples offered, however, of an emergency rule action initiated by the governor's office. It seems that executive branch rulemaking activity, whether through the regular or the emergency process, remains basically a departmental function.

4.5 An Executive Branch Overview

This chapter started from the hypothesis that departments would choose rules promulgation strategies which would reduce uncertainty and maximize approval rates. Rule-making was shown to be a hierarchical

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35. The same respondent also suggested that the legislature may have begun to notice and to have questioned the governor about the increase in emergency rules.

activity, with non-controversial proposals involving lower level personnel, higher level personnel acting when necessary. Legislative review was discussed as an intrusion into administrative perspectives and routines relating to the rule-making process. Rule-making was shown to be a costly process in Michigan, one in which there are sizable budget incentives for administrators to be successful in the enterprise.

It appears that many Michigan administrators operate out of a strong professional orientation but find the system hinders them in multiple ways. Interest groups, especially business groups, use the rules oversight system as a device to achieve their own goals, often to the frustration of administrators. At the same time, agencies directly impacting a less organized public may be able to operate more independently, more directly out of professional norms, as in the case of the Department of Social Services.

Substantial areas, although probably not the majority, of the rule-making arena are inherently conflictual. Changes in the Michigan oversight system have expanded the opportunities for expression of those conflicts. Michigan administrators have had to accept increased political participation in and impact on administrative rule-making processes.

It was found that successful rule-making is very difficult for Michigan administrators. Rather than being able to utilize experience and employ strategies which resulted in improved approval rates over time, it appears that Michigan administrators engaged in rule promulgation activity are struggling in a highly uncertain and perhaps even hostile environment. All departments saw approval rates drop as a

result of the change to the requirement of prior legislative approval although they varied in the degree to which they were affected by that change. The two departments submitting the greatest number of rules per year were found to drop notably less than the others. One of those was the Department of Natural Resources which was shown to be a special case, due to a large number of uniquely localized, generally approved rules.

The utilization and viability of a series of possible strategies was investigated. Strategic timing of transmittals was found not to have been used systematically when it would have been most useful, and to be of limited usefulness now with a year-round legislature, possible 90-day review period, and the requirement of prior legislative approval. Agencies were found to engage in active mobilization and negotiation campaigns to enhance rules approval. Agencies offered as successful examples by others actors in the process were recognized for the contacts they maintained with joint committee members and interest groups alike. Agenda manipulation strategies are engaged in to some degree by departments, but cautiously; there are ample opportunities for legislative retaliation if this becomes a regular pattern. Internal organizational structures have been devised in some agencies to facilitate rules promulgation processes, but have not resulted in high rates of approval. Looking at the kind of services provided by one such office (in the Department of Public Health), however, strongly suggests there would be an even lower approval rate without this investment of resources.

Michigan administrative rule-making is a decentralized, fragmented activity from the executive branch perspective. Although Michigan

governors have acted a number of times to protect the executive branch from further legislative instrusions, they have been unsuccessful in stopping increased legislative oversight of administrative rules. With a strong system now in place, governors participate only infrequently, sometimes through the emergency rules process. Emergency rules, requiring the governor's signature, were found to be promulgated 13.1% as frequently as were rules going through the regular public hearing and legislative review process and to serve a variety of functions, including preservation of the public health, avoidance of federal (frequently economic) sanctions, agenda manipulation by altering the regulatory status quo, and initial implementation of new laws.

If this bureaucratic structure were runaway it should be enjoying a much higher rate of success in the presentation of rules, and should not have to invest so heavily in negotiation with other actors. On the other hand, if it were fully under legislative control it should be experiencing less conflict. Although there are certainly portions of the system which enhance rational actor legislator goals, the level of conflict associated with Michigan administrative rule-making strongly suggests a professionally-oriented civil service "trying to do its job" in a world only partly of its making, in other words, a constrained bureaucracy.

Chapter 5

The Public and Legislative Review

Previous chapters have focused on government actors in the oversight process with only peripheral discussion of the role of the public. This chapter looks more directly at the role and dynamics of public participation in the rule promulgation and review process. The public, of course, is more than a monolithic entity acting on government. It is constituted of a multitude of individuals and groups among whom resources and incentives for participation in the process vary greatly.

Chapter 1 posited member benefits as the primary goal motivating interest group participation in the processes and procedures surrounding the legislative oversight of administrative rules. Although most "public" participation in the review process is by groups, some participants may act as individuals. The incentive for them is also the possibility of attaining a certain benefit. For both, whether group or individual participants, the benefit may be monetary or more symbolic. In recent years, for instance, the Joint Committee on Administrative Rules has acted on rules ranging from those dealing with the definition of commercial fishing zones to the definition of live birth. The first had clear economic impacts for a certain sector of the state's

residents, the other had no apparent economic impact on any party; both were among those cases which have involved multiple hearings and multiple resubmissions.

A major change in the Michigan administrative procedures acts over the last forty years has been the increasing definition of rights of citizens relative to administrative processes and procedures. By the beginning of the time period covered in this study, Michigan's Administrative Procedures Act specifically provided for public participation at several stages in the rules promulgation process. Participation might involve the filing of a request for a rule change, comment in writing or at public hearing on the content of a formally proposed rule, or testimony at the time a rule goes before the Joint Committee on Administrative Rules. In addition, some statutes require the administering departments to establish advisory groups to assist in the development or periodic review of rules. Among the most notable of such requirements are those of the Michigan Occupational Safety and Health Act (MIOSHA), under which more than seventy advisory committees have been created.[1] Several statutes provide for financial support for public participation in administrative proceedings.[2] This does not yet mean there is equal participation or benefits for all parties affected by the promulgation of administrative rules in the state of Michigan.

Legislative review of administrative rules occurs at the end of a

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1. These advisory groups are in addition to the more than 250 state boards and commissions referred to in Chapter 4.

2. Several acts, for instance, have specifically provided for paying travel expenses and/or a per diem for public participation in utility rate hearings by the Public Service Commission and similar compensation for the MIOSHA-related rules development advisory committees.

long chain of governmental decision making. It is a relatively unreported part of government activity—stories about administrative rules, particularly the legislative review thereof, rarely hit the front page or any other page of the general press. Some critics of legislative review have charged it is so far down the line that only the most committed will continue to this stage. Even those deeply committed may be unable to participate at the level they would like because they have exhausted their resources at an earlier stage. In this chapter, I shall try to establish whether the legislative review process operates as an additional or an alternative point of influence for those seeking benefits through government action, and the impacts upon participation and outcomes of the resultant finding. Who among the public participate, using what resources, with what effect, and under what circumstances?

5.1 Organization and Influence

Both the process and the provisions of the Michigan APA are such as to encourage participation at an early stage in the rules promulgation process. An interested party may propose a rule, including changes to existing rules, even directly writing desired language, much as private sector participants write legislation and then find sympathetic legislators to introduce it.

Other participants may not become involved until the agency serves public notice that a new rule is pending. The Michigan APA requires the

departments to publish notice of hearings in at least three newspapers of general circulation. They are usually one of the Detroit dailies, an upper peninsula paper, and either the Grand Rapids or Lansing dailies.[3] These notices are published in the same general format as other required pubic notices and are probably noticed infrequently by most members of the public, even if they regularly read a paper in which the notices are published.[4] Probably more important in stimulating participation at the department hearing stage is the APA requirement that the departments maintain lists of persons and organizations wishing to be notified of such hearings. This allows organized groups to regularly receive notice of pending rules and to take action accordingly. This might include formal board action, notification to members through a regular newsletter or special bulletin, preparation of testimony, organization of a lobbying campaign with the agency, or even contacting related groups to check their positions or coordinate action. Private individuals may have their names placed on the notification lists and may pursue similar strategies.

There are also opportunities for participation after the formal hearings and before presentation of a rule to the Legislative Service Bureau and the office of the Attorney General for clearance prior to presentation to the Joint Committee. The departmental public hearings frequently result in changes to the rule as originally proposed by the

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3. Grand Rapids is the second largest city in the state; Lansing is the third largest and also the state capital.

4. A totally "unscientific" index of this problem is my own experience. After six months of casually watching for notice of such hearings in the Lansing State Journal, the only daily newspaper published in the state capital, my file holds clippings of exactly three such notices.

agency. Interested parties who maintain contact with the agency through this period may be able to additionally influence those changes.

To what degree do these activities take place? It seems to vary considerably. The most easily documented participation is public comment, whether at the hearing or in writing, on a proposed rule. Since 1980, agencies have been required to file with the JCAR rule submittal a regulatory impact statement which includes a listing of those groups affected by the proposal.[5]. Agencies also report the number of hearings held on the rule, and the number and identification of persons in favor and opposed to the rule.[6] This is also a common part of the content of testimony before the JCAR. It is not unusual that less than a dozen persons appear at the departmental hearing. At other times, although rarely, there may be hundreds.[7]

Organizational resources are important determiners in a number of ways of the extent and influence of participation in the rules promulgation process. It is not unknown for an unaffiliated, private, individual to testify before the committee, but it is extremely rare. Most participation is clearly generated through organized group activity.

Where do proposed rules come from? Many are the result of action

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5. See Michigan 1980 PA 445 at 24.245(2)

6. Unfortunately, from a research standpoint, those records are maintained for only two years after the filing of a rule, the period during which an appeal on procedural grounds can be filed against a rule.

7. The 1983 hearings on rules dealing with state payment of compensation to farmers with PCB-contaminated silos are the most recent example of this higher level of participation.

by the national government. This is especially the case for the departments of Labor and Natural Resources (which are also the departments with the greatest number of rules transmittals)[8] and the Department of Social Services.

Additional rules transmittals result from attempts within departments to solve a specific administrative or technical problem. Sometimes the proposal is an adaption of department policy to a new technology, as in two cases early in 1984 dealing with new motorcycle license testing procedures and changes in the breathalyzers used by the state police and other police agencies. Other changes may be attempts to streamline administrative procedures, reducing the number of forms or permits required to engage in a regulated activity.

Yet another set may be generated by complaints of regulated parties about compliance difficulties; the problem is not necessarily one of a wish to evade regulation, but to make it more workable. Such complaints may be registered by individual businesses, but they are much more likely to come through one of the state-wide organizations who have staff whose responsibility it is to monitor the rules process and its impacts. Among the most effective in this regard are the Michigan Manufacturers Association (MMA) and the Michigan State Chamber of Commerce.

Both the MMA and the state Chamber regularly have a staff member in attendance at JCAR meetings. In addition to monitoring proceedings, this person maintains a personal relationship with legislators and

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8. Together they accounted for 49.6% of all transmittals from 1972 through 1982.

department personnel alike. The position also carries responsibility for keeping members informed through regular newsletters of pending rules which might be of interest and coordinating member contacts with JCAR members and hearing testimony if they believe it necessary. Few volunteer organizations can afford to maintain this degree of attention and only one private individual within my eight months of observing the committee had a level of participation which even neared this.[9]

The Joint Committee sees itself both as protector of legislative prerogatives and guardian of the people in their rule-related dealings with the executive branch. Originally formally authorized only to act on the basis of the conformity of the proposed rule to the confines of the statute on which it was based, and then "expediency", recent amendments to the act have also given the committee information and authority allowing it to act on the basis of the fiscal impacts of proposed regulation. The committee has always acted on more than these formal criteria, however.

When asked what the primary responsiblity of the committee was, the four-time head and fourteen-year member of the committee responded first with "fair to the public." He next talked about intent of the statute,

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9. That single case was the mother of a child who had died at a summer camp. She was tenacious in keeping informed of the progression of the new rules package regarding summer camp regulation and appeared at every related JCAR hearing. In addition, she individually contacted both department and committee staff and JCAR members. She achieved major portions of the changes she desired regarding means of notification of illness but the committee agreed with the department in not requiring camp directors to notify parents of all health complaints. Several JCAR members had been camp counselors and remembered homesick campers who got well with a little more attention and involvement in camp activities.

and making sure the bureaucracy was not doing something just for its convenience and as a result, inconveniencing the public.[10] Whatever the legalities, this attitude as protector of the public against bureaucratic power and self-interest has been a part of joint committee considerations throughout the time of systematic review.[11]

This suggests several bases for interest group lobbying of the joint committee. Opposition to a proposed rule could charge lack of conformity to the underlying statute, an unfair burden on whomever or whatever was to be regulated, or agency convenience which would inconvenience the public. Sometimes all three are charged. Support for a proposal, on the other hand, might cite careful conformity to the statute, evenhandedness in application, and a service to the public. The cover form which accompanies a rule to the committee upon initial transmittal usually claims at least two of these factors, and frequently all three.

Groups obviously vary in their ability to demonstrate any of these factors. Arguments regarding the underlying statute are more likely made by paid lobbyists than private individuals. Arguments about the balance of agency convenience and public service are most convincing when made by persons with access to information and/or experience within the administrative structures. Private individuals may charge such

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10. Thomas J. Anderson, member of Michigan House of Representatives, 1966-1982, interview, Lansing, Michigan, August 1, 1984.

11. Rep. Anderson served on the committee for his entire time in the legislature, and headed it in alternate sessions from 1974 until he left the legislature in 1982. This attitude was shared by current members of the committee, as demonstrated in interviews and numerous public comments at committee meetings.

problems but be overpowered by the professionals.

The basic issue of fairness is the one most likely invoked successfully by those with less information or sophistication. A witness who can document uneven application or the potential for such can almost always force change in a rule. In recent years, language in a rule which provides for enforcement "at the discretion of the director" has been almost uniformly rejected by the committee. It should be noted, however, that committee responsive may be based on something more than sensitivity to fairness alone; discussion in earlier chapters would suggest that this responsiveness would also have utility as a further risk minimization strategy.

5.2 A Few Words on Campaign Contributions

How does one gain access to the committee? Traditional means advocated in civics classes on "how to influence your legislator" are relevant in the rules oversight process, perhaps particularly so because of the committee's concern for fairness. That is not all that seems to count, however.

Although I did not attempt a systematic investigation of campaign contributions to members of the joint committee, several things are readily apparent from a cursory look at recent data.[12] First is the balance between district and non-district based contributions. Members

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12. Michigan's state campaign finance reporting began in 1978.

receive contributions from persons in their geographic constituencies but these are most likely relatively small contributions from individuals or the county Democratic or Republican committees. It appears from initial examination of the financing records that interest group constituencies, i.e., groups based outside the legislator's district and with no apparent direct or distinctive relationship to the district, are more important sources of campaign funds for members of this committee. This finding mirrors legislators' experience regarding rule-transmittal contacts. As reported in Chapter 3, almost all inputs are from interest groups, not individual district constituents.

Given that balance, the second notable finding is the breadth of interests which contribute to JCAR members' re-election. In 1978, the first year in which Michigan required the reporting of campaign contributions, JCAR members, and especially the chairperson, received contributions from PACs from a broad range of professional and occupational groups (from chiropractors and lawyers to contractors and petroleum jobbers), labor groups and major employers (United Auto Workers to General Motors), private financial institutions and credit unions, and utilities. Not all contributions were from economic interests, however; several members of the committee also received contributions, for instance, from Michigan Right to Life. The list of contributors in the first year of reporting alone--totaling over 150 groups--mirrored the wide range of issues which come before the joint committee, both economic and noneconomic.

As one looks at the record over time, most organizations seem not to be rewarding legislators for individual votes so much as buying access. There are numerous cases where a given member of the committee

is receiving contributions from what are generally regarded as likely opponents on many regulatory issues. Indeed, one member received on the same day contributions from the United Auto Workers, the Ford Motor Company, and the Michigan Automobile Dealers' Association.[13] As discussed in Chapter 3, individual committee members "specialize" in certain rule-making areas, such as agriculture, labor, mining and logging, highway patrol, education, or urban issues. Many such interests are district or occupationally related, but not all. The existence of these areas of rule specialization enhances both the development and potential influence of "interest group constituencies" for individual members of the committee.

There appears to be some variation by party, but there are groups which contribute to virtually all members of the committee. There are many other groups which contribute to only a small number of legislators, perhaps no more than ten or fifteen, but include among that number, members of the JCAR; those contribution patterns would be of particular interest in a systematic analysis.

Such limited evidence tells nothing about how contributions to members of this committee differ from those who are members of other committees, does not address the possibility of contributions made because of membership on another committee rather than one's presence on the JCAR, and reveals nothing regarding the size or frequency of contributions. (Some groups made pre- and post- primary and general election contributions; others contributed only once.) That work

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13. Campaign finance reporting documents, Rep. Virgil Smith (D-Detroit), May 4, 1984, on file with the Secretary of State, Lansing, Michigan.

remains for a separate effort. Nonetheless, it appears to tell us that interest groups find the members of the JCAR worthy of their financial attention. To the degree this is the case, it offers additional evidence of the pivotal influence of the committee.

5.3 Economic Groups--Federalism, Faction and State Regulation

James Madison warned us nearly two hundred years ago of the dangers of faction and proposed a solution--the federal structure.[14] The federal structure poses several problems, however, in the context of state regulatory policy.

Madison believed that the concerted action of interest groups(factions) could best be controlled by requiring them to compete against each other in the national arena. He was pessimistic about the ability of state legislatures to resist the pressures of such groups. He recognized the potential problem of small interests looming large in the more limited geographical domain.

While Madison saw federalism as largely a preventive device, he also gave some support to it for the flexibility and opportunity for experimentation which it would introduce into the system. (He was somewhat cynical about it, however, saying that at least a mistake made in one state would not have to be suffered by all.) Regulatory action at the state level represents an opportunity for citizens to choose

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14. James Madison, The Federalist, Nos. 10 and 51.

differing levels of government oversight of various activities, but not necessarily more than would be the case if there were only federal regulation. Regulated interests may, in fact, use the differences between the states as a means to ratchet all the states into lower levels of regulation than might otherwise be the case.

In the eight months that I observed Michigan's Joint Committee on Administrative rules there were a number of occasions on which the level of regulation in other states was specifically introduced into committee discussion. Sometimes a representative of an industry group raised the question; other times it was a member of the joint committee. Issues ranged from environmental standards to the number of hours truckers could be on the road without resting to the factors taken into account in authorizing utility rates.

Industry representatives were most frequently asking for uniformity of practice between the states. Not only was regulatory certainty important for them, as noted earlier, so was regulatory uniformity. There were two major reasons for this. First, many of the companies or industries were involved in business in a number of states. Differing rules between states simply complicate compliance, resulting in higher costs.[15] Businesses located completely within Michigan had a related but different concern. They feared more stringent regulations in Michigan would result in noncompetitive prices for their own products.

The continuing slow recovery of Michigan's economy and the general public anti-regulatory mood have caused the committee to regard such

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15. No one complained that a Michigan standard was too low and asked for a more stringent standard as a way to achieve uniformity in regulation; this argument always went in the other direction.

arguments carefully. Fear of losing Michigan businesses or business for Michigan companies is given greater credence than even two years previously under these circumstances. In the process, it has increased the force of anti- or reduced-regulatory arguments in the JCAR voting decision.

Parties to such disputes variously interpret the participation of others and themselves. The Michigan Manufacturers' Association and State Chamber of Council representatives, Department of Labor personnel, and even JCAR members, for instance remarked during joint committee hearings that one reason for the success of rules promulgated under MIOSHA is the existence of the many ad hoc advisory groups.[16] These groups, required by the statute, have equal labor and management representation. A labor representative, however, thought there were too many such groups. So many people were required that it made it difficult to find enough labor people to fill the slots. Moreover, even when on the committee, labor representatives could be overshadowed by the "fast-talking, highly educated" management representatives. The solution suggested by this respondent was a reduction in the number of groups, allowing labor to educate a few representatives to operate in this arena more effectively.[17]

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16. Success in this context means lack of conflict at the committee level, and relatively high rates of approval.

17. This respondent preferred not to be identified.

5.4 Noneconomic Groups--One Example

Much of the interest group literature as well as discussion thus far here has focused on economic interests as prime motivators of participation in regulatory activity. It is not always so, however, and one of the more interesting examples in recent Michigan history has been the case of rules defining a live birth.

Michigan enacted a new public health code in 1978. One of its requirements was a definition of live birth. An emergency rule definition was promulgated that fall pending approval of a permanent rule through the regular rule process. There was no controversy concerning the emergency rule and no opposition expressed at the public hearing conducted by the Department of Public Health prior to transmittal of the rules proposal to the Joint Committee.

The Public Health rule was scheduled first on the JCAR agenda on May 29, 1979. The first sign the director had of trouble was the announcement by the committee chairperson that the rule was being moved to the end--they had had a number of complaints. The rule was withdrawn.

Complaints had been from opposite sides of an issue that was a recurring source of polarization in Michigan politics. Both Michigan Citizens for Life and the Michigan state National Organization for Women chapter had taken their concerns regarding the rule to the legislators. In each case, it appeared that the groups had learned of the proposed rule only after the public hearing.

After the rule was withdrawn, department personnel met a number of times with representatives from the interest groups. Five months later, they reached language acceptable to both groups and resubmitted the rule to the Joint Committee. In an interesting departure from the committee tendency to approve cases on which there was department and interest group concurrence, the committee voted twice but was unable to arrive at a concurring majority either to approve or disapprove. It appeared to be a case where at least some legislators were not fully confident that the parties were truly in agreement regarding the proposal. Exhibiting their normal risk averse behavior, they waited. The second presentation of the rule resulted in an impasse.

After still further meetings, and intense lobbying of legislators, the rule went to the committee a third time. Once again, they were unwilling to adopt the rule and it was withdrawn. Finally, two years later, with the full knowledge of the interested groups and JCAR members, the rule was adopted after being incorporated in a nine-page set of other public health code definitions.

One of the particularly interesting aspects of this case was the initial contact with the committee. The groups simply did not know about the department action in time to participate there; thus, the JCAR became their alternate contact point with the rules promulgation process. Having used that access and gained entry to the process, they then became involved in regular negotiations through and with department personnel.

Neither of the participating groups had an economic interest motivating their participation. Nonetheless, they followed the issue for months, indeed several years, participating in negotiatory meetings

with department personnel, lobbying JCAR members, and attending committee meetings.

5.5 Interest Groups in Perspective

The most successful lobbying is carried out by those who operate in both parts of the rules oversight system—being involved with administrative promulgation as well as legislative review. The normative issue regarding "the second bite at the apple" raised by Bruff and Gellhorn and others is a serious one. Does this system unfairly advantage certain participants over others?

The answer depends, in part, on one's perceptions of legislatures, public administration, and the proper place and role of public participation in governmental decision making. Bruff and Gellhorn seem to have taken as their reference point a a relatively value-neutral public administrator acting on the basis of the record developed through public hearing and document submittal. The Michigan legislative review system clearly goes beyond that, incorporating all those elements of private contact and extended side negotiation which were causes of their concern. What is interesting is the direct participation of public administrators in that process. Whatever the degree to which public administrators may have been able to act independently in the past, the review process has made them even more open to public perusal of and participation in administrative decision making.

Interest group participation has frequently caused a department to

modify an initial position. Legislators' attitudes toward this outcome is that it is probably appropriate. They look to lobbyists and other private sector participants for information on the impacts and implications of rule implementation. A former speaker of the state House had called "arguments given by the lobbyists 'the means by which we educate ourselves.'"[18]

Lobbyists are most likely to achieve their goals if they work both sets of participants. The two parts of the system serve different purposes and only to a limited degree are alternatives for each other. The review committee does not write rules. Although there has been controversy over that at times, the fact is that the committee operates from the basis of the rule which has been placed before it by the department. Thus administrative actors set the initial content of the agenda. Groups may seek to amend that in the context of joint committee review but, in general, the basic framework is established. To be a part of the construction of that framework could frequently be advantageous to an interest group.

At the same time, the legislative review process offers participants both an additional and alternative means of participating in the process. If they have missed the administrative development, as was the case in the live birth definition rule, they can still have substantive effect by entering the process at the JCAR level.

In addition, the fact that the JCAR substantively intervenes means that those hearings offer the opportunity to inject into consideration

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18. "Bless the Lobbyists, Ryan says," John B. Albright, Lansing State Journal, December 16, 1982.

certain values which the public administrators may not have wished to consider. These are not necessarily matters of right or wrong choices but different ones. The legislative actors, by virtue of different experience and orientation, are sometimes willing to consider factors which the administrators are not.

The majority of rules pass, but a significant number only after substantial negotiation between interested parties. Successful negotiators usually work with agency people in the development of a rule, and then are involved in contacts with legislators to assure its passage. Some do, indeed, get a second bite at the apple under those circumstances, but the alternative seems to be to let none have any. Worthwhile input would be lost if that were the alternative adopted.

Who then is in charge? Do the interest groups really control the process? Is there room for professional autonomy among civil servants within this context? Perhaps the bureaucrats do indeed merely offer up whatever the legislators want.

Evidence from this chapter, brief though it is, still finds bureaucrats operating as independent actors and further supports the finding of earlier chapters. Administrators do play a key role and have special agenda advantages in this setting. (We will see more of this in the next chapter in the discussion of the review of existing rules.) For example, the agency needed a live birth definition and it got one, even if legislators were uncomfortable going on the line on the issue. Nevertheless, interest groups and private members of the public are important participants in the negotiation process and while not sole determiners of either rule content or outcome, are additional sources of constraints upon the bureaucrats.

Chapter 6

Legislative Oversight, 1983-1984: Continuity and Change

The 1983-84 biennium brought several changes potentially affecting the legislative oversight of administrative rules in the state of Michigan. To begin with, for the first time since systematic legislative review had been instituted, the legislative session started with one party in control of both the legislative and executive branches. Second, there were substantial changes in the membership of the Joint Committee on Administrative Rules, first, because of the greatest turnover in its modern history and then, because of further changes resulting from Senate recall elections in the fall of 1983. Finally, the committee was given a new mandate—the systematic review of existing rules. These factors allowed preliminary testing of hypotheses addressing the effects of institutional, party, and ideological factors on approval rates.

6.1 Oversight under Same Party Control—Legislature and Governorship

With the same party in control of the legislative and executive branches, one might hypothesize that policy direction would be harmonized and a greater percentage of administrative rules would be approved by the legislature. If this were the case, several conditions would have to be met:

1. substantive gubernatorial authority over administrative agencies, and utilization of that authority;
2. gubernatorial interest in administrative rules;
3. general agreement between governor and legislature regarding the proper approach to and content of administrative rules.

On the other hand, improved approval rates would result only if party identification were more important than institutional perspectives and loyalties in determining orientation toward rules proposals and processes. Put simply, the question is this: when the Democrats control the legislature, which counts more—that the governor is a Democrat or that the governor is governor? More formally:

Hypothesis 5. Approval rates will be higher under same party legislative-executive control than under split party control.

The election of Governor James Blanchard in 1983 was a momentous occasion in recent Michigan history. For the first time in twenty years, Democrats controlled both the office of chief executive and both houses of the legislature. Despite the generally good relationships between former Republican governor William Milliken and the legislature,

many were hoping for a new day in executive-legislative relations and the realization of Democratic policy goals.

There were voices of caution, however. Michigan was still suffering from the general recession and the specific problems associated with the decline of the American automobile industry; the new governor would not be able to completely reform state government and programs into a new Democratic mecca. Concern for the impact of change on the Michigan business community was an important component in the evaluation of any new proposal.

During 1983, a total of 152 proposed rules were transmitted to the Joint Committee on Administrative Rules. Table 6.1 shows a result opposite from that predicted. Rather than increasing under same party legislative and gubernatorial control, approval rates actually declined. From 1978-1982, under the same (reverse) veto rule but split party control, a total of 73.5% of rules proposals were approved. In 1983, under same party legislative-executive control, the approval rate dropped to 70.7%. The relationship lacks statistical significance, however, at even the 0.10 level.

Table 6.1. JCAR Disposition of Rules Transmittals by Party Control (Legislature and Governorship): 1978-1983+[a]

Outcome	Party Control (Legislature and Governorship) Split 1978-1982 N	%	Same 1983+ N	%	Row N	%
Approved	576	(73.5)	118	(70.7)	694	(73.0)
Other	208	(26.5)	49	(29.3)	257	(27.0)
Column total	784		167		951	
%		(82.4)		(17.6)		(100.0)

X^2 = .737
p = .40
Yule's Q = .070

[a]Included in the 1983 cases are 15 cases decided in 1984 before the JCAR's Senate members were changed.

How ought this be interpreted? A new governor, particularly when assuming office after a long period of opposite party control of the executive branch may initially have only limited control of and input into the administrative rule-making apparatus. Michigan, as is true of many American state governments, has a professionalized civil service of many years standing. Although a new governor has the right to name some department heads and a certain number of second level administrators, the overwhelming majority of state workers remain in place regardless of changes of governor. State personnel most directly associated with the development of administrative rules are below those personnel levels immediately affected by a change in governors. On the other hand, a new governor under these circumstances is likely to be advocating a number of new policy goals; to the extent that policy program is enacted, new rules will be necessary. Areas of high gubernatorial interest could reach legislative review within the first twelve months of a new

administration but the bulk of the rules reaching the committee during 1983 were undoubtedly "in the pipeline" prior to the beginning of the Blanchard administration. Overall, these factors suggest caution in interpreting these results.

Despite these considerations, several indicators would favor using this evidence as the basis for rejecting the hypothesis. Prior to being elected governor of Michigan, James Blanchard had served as a Michigan assistant attorney general and twice as a Michigan member of the U.S. House of Representatives. As an assistant attorney general, he had reviewed administrative rules. As a U.S. representative, he testified in favor of their legislative review as well.[1] The new governor had the knowledge and experience to use the rules promulgation process to advance policy goals should he see it as necessary or advantageous.

Although the new governor expressed concerns about administrative rules, especially as they affected the state's business climate,[2] the governor's office actually paid little attention to specific rules. The only rule receiving explicit gubernatorial attention in Blanchard's first year was an emergency rule relating to PCB-contaminated silos.[3]

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1. He testified in Congressional hearings that he had advised and represented, among others, the Departments of Agriculture and Commerce and numerous licensing boards in their rulemaking activities. See "Hearings Before the Subcommittee on Administrative Law and Governmental Relations," Committee on the Judiciary, U.S. House of Representatives, Serial No. 30, 1975, p.162-165.

2. See "State of the State Address", Hon. James J. Blanchard, Governor, State of Michigan, January, 1984, pp. 21, 23.

3. Larry Tokarski, Director of Legal Affairs, Office of the Governor, State of Michigan, interview, East Lansing, Michigan, January 23, 1984. See also "State of the State Address", Hon. James J. Blanchard, Governor, State of Michigan, January, 1984, p. 38.

While the evidence is at least suggestive that institutional perspective is more important than is shared party control in determining the outcome of legislative review of administrative rules, intervening political events made it at least temporarily impossible to expand the data base for further testing of the hypothesis in the Michigan setting. Senate majority change in 1984 resulted in split party control within the legislature, ending same party legislative-executive control.

6.2 The Joint Committee on Administrative Rules: Party and Ideology

The Joint Committee on Administrative Rules underwent important memberships with the beginning of the 1983-84 legislature. Only four 1981-82 JCAR members returned to the legislature. One of those left the JCAR to head the House appropriations committee. The other three members returned, maintaining an adjusted career investment level similar to that of previous years. Nonetheless, with seven new members, the committee experienced its greatest turnover since the beginning of systematic review. One of the members not returning to the legislature was Representative Thomas Anderson, a 9-term member of the committee and for the previous four terms either chairperson or alternate chairperson.[4]

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4. The head of the delegation from the chamber not in charge during a given biennium was known as the alternate chairperson.

Appointments to the JCAR in 1983 generally were in keeping with a more conservative regulatory climate. The new head of the committee, a Democratic representative who had served on the committee the two previous terms, is generally recognized and freely characterized himself as one of the more conservative legislators of his party.[5] The Republican members from the House, although not the most conservative of their colleagues were well to the right of the House majority.[6] One of the other House members could be described as a moderate Democrat, and one as liberal.[7]

The Senate membership was even more conservative. At least four of the five senators would be regarded as conservative representatives of their respective parties. The only senator returning to the committee, a Democrat, was one of the most anti-regulatory members of that body, at least as it applied to the Department of Natural Resources.[8] The two Republican senators were recognized as among the most conservative of

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5. Rep. Michael Griffin, R-50, Jackson, interview, Lansing, Michigan, January 4, 1984.

6. Reps. Ernest Nash, R-56, Dimondale, representing a rural and suburban district adjacent to Lansing, the state capital; and Charles Mueller, R-83, Linden, from a largely rural district adjacent to Flint.

7. Reps. Dennis M. Dutko, D-25, Warren, in urban Macomb County, just north of Detroit; and Virgil Smith, Jr., D-10, representing an inner-city area of Detroit.

8. Sen. Joseph Mack, D-38, Ironwood, in the upper peninsula, an area with heavy forestry and mining interests.

their colleagues. The other two senators, Democrats, would probably best be described as moderate and conservative respectively.[9]

The appointment of the Republican senators was particularly interesting. At the beginning of the 1983-84 legislative session, there was a stand-off for leadership of the Senate Republican caucus. It was resolved when one of the senators vying for the position went to the other contender, asking what he would take in place of the leadership of the caucus. The answer was simple: appointments to the Joint Committee on Administrative Rules for both himself and another conservative senator. As the senator explained in an interview:

> "I wasn't interested in who got the biggest sofa; I was interested in policy. Some people didn't like that. They like to spread the conservatives out so they can't change anything."[10]

The deal was made but greater change was yet to come.[11]

At the beginning of the 1983 legislative session, the state senate had a 20-18 Democratic majority but in the fall of 1983 two Democratic senators were recalled and replaced in special elections by Republicans. Thus, the Republicans assumed control of the Senate. For the first time in Michigan senatorial history, there was chamber wide mid-session committee realignment. Democratic members were removed from committees

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9. The two Republicans were Sens. Ed Fredricks, R-23, West Olive, representing a two-county rural area on Lake Michigan; and Alan Cropsey, R-30, Dewitt, representing three rural counties north and east of Lansing, the state capital. The Democrats were Sens. Jerome T. Hart, committee vice-chair, D-14, Saginaw, representing an industrial city and its surrounding county; and Michael O'Brien, D-5, Detroit, a middle to upper-middle class area of northwest Detroit.

10. Sen. Ed Fredricks, interview, Lansing, Michigan, March 8, 1984.

11. The senator appointed with Senator Fredricks was Senator Alan Cropsey.

and additional Republicans appointed with the net result being Republican chairs and majorities for all Senate committees.

The Senate delegation to the Joint Committee on Administrative Rules underwent the same change, with three Republicans and two Democrats now being appointed, reversing the party balance. The 1983 Senate alternate chair of the committee, a Democrat, left. According to several sources, this was because he would be bumped from that position by the new Republican majority and thus would not chair the JCAR when that position rotated to the Senate in 1985. In addition, since the senior Democratic Senate member of the committee lost his position as head of the committee on natural resources during the reshuffle, he exerted chamber seniority, gave up his seat on the JCAR, and took a seat on the appropriations committee.[12] That left room for one new Democratic senator as well as the new Republican. The new Democrat appointee, one of the most conservative senators, had been forced off appropriations in the reshuffle.[13] The new Republican appointee, a decidely conservative former state representative, was one of those elected in the special elections following the recalls.[14]

The potential effects of these changes were multiple. It has already been demonstrated that outcomes are significantly related to changes in the veto rule. Prior testing of that relationship, however,

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12. This was Senator Joseph Mack, then in his fourth term on the JCAR.

13. Sen. Gilbert DiNello, D-26, East Detroit, representing Mt. Clemens and St. Claire Shores as well, a mixed district with working class, lake/resort, and middle to upper-middle class areas.

14. Sen. Kirby Holmes, R-9, Utica, representing Sterling Heights and northern Macomb county, a rural and industrial area north of Detroit. He had served earlier in the state House of Representatives.)

was under conditions of same party legislative control. Now, however, for the first time since the beginning in 1978 of the requirement of prior legislative approval, agencies were dealing with a committee with split majorities: the Senate majority was Republican; the House majority, Democratic. If party is an important component of JCAR member voting decisions and the parties differ significantly on issues upon which they are voting, approval rates should decline under conditions of split legislative control. Moreover, one would expect to more frequently find a lack of concurring majorities between the two delegations and the incidence of impasse should increase.

On the other hand, if ideology is more important, it is more difficult to predict the likely effect of these committee changes. The committee delegations from both chambers are relatively conservative, perhaps reducing the partisan differences and the likelihood of impasse, but not completely. There could still be disagreement between the delegations as to where to draw the line on regulatory activity.

Hypothesis 6. Approval rates will be lower and impasse higher under split party legislative control than under same party control.

Table 6.2 shows a decline in overall approval rates, as predicted, but the difference of 1.8% is "significant" at only the .50 level. Looking at impasses alone, the difference is tantalizing but not necessarily significant. The change from no impasses in 1983 to three in 1984 is in the right direction but with so few cases is inconclusive. The evidence at this level fails to support the hypothesis that split party legislative control will result in significantly lower rates of approval and higher impasse rates.

Table 6.2. JCAR Disposition of Transmittals by Legislative Party Control and Incidence of Impasse, 1983-1984.

	Party Control of Michigan Senate and House					
	Same (1983+)[a]		Split (1984-)[b]		Row	
Transmittal	N	%	N	%	N	%
Approved	118	(70.7)	84	(68.9)	202	(69.9)
Other[c]	49	(29.3)	38	(31.2)	87	(30.1)
Column Total	167		122		289	
%		(55.8)		(44.2)		(100.0)
Impasse	0	(0.0)	3	(2.5)		

$X^2 = 0.60$
$p = .50$
Yule's Q = .043

[a]Includes all 1983 cases plus 15 from 1984 decided prior to the seating of the new Senate membership.
[b]Data for 1984 are those cases decided after 2/21/84, the date the new Senate delegation was seated.
[c]In 1983+, 44 of these rules were withdrawals; in 1984, 35 were withdrawals.

There is one bit of evidence which may clarify the picture somewhat. At its August, 1984, meeting, the JCAR processed twenty-one transmittals rescinding 195 existing Public Health rules.[15] Subtracting the ensuing twenty-one approvals from the other 1984 approvals (84) results in an approval rate of only 62.4%.. That approval rate set

15. This is a good example of the problem of unit of analysis. When introduced by JCAR Chairperson Griffin at the meeting, they were referred to as 195 rules and are again so identified in a letter to the governor. (See Appendix B—letter to the Honorable James J. Blanchard, from Michael J. Griffin, chairman, Joint Committee on Administrative Rules, State of Michigan, January 10, 1985, p. 1.) Individual transmittals may contain any number of "rules." Indeed, I never encountered a formal definition of the minimum unit constituting a "rule"; one which would probably serve for most purposes is "any separately numbered subsection of the Administrative Code." In this work, the individual transmittal package has been used as the unit of analysis, regardless of the number of "rules" it might contain.

against the 70.7% approval in 1983 results in a X^2 of 2.064, with a probability of less than .20 (Yule's Q =.185). This suggests that in cases which lack prior consensus there may be a party effect but, if so, it is apparently quite weak. Overall, these data do not support a solely party-based interpretation of the outcomes of rule review. To the degree that party influence is found, it appears to be more a function of underlying ideology.

Yet another 1984 change in committee membership offered a further example of the multiple influences on the committee. After several unsuccessful attempts to pass an administrative rule dealing with auto exhaust emissions, Michigan was in danger of losing its federal highway monies. Conservative Democratic Senator DiNello, appointed to the committee in January of 1984, following the recalls, had been less than diligent in meeting committee responsibilities and, further, was against the rule. In an unusual move mixing party, ideology, institutional, and budgetary factors, DiNello was removed from the committee. His seat was taken by Senate Majority Leader William Faust. The auto emissions rules passed and Michigan's federal funds were protected. Thus, even as the committee sometimes served as a check on other legislative processes, the legislature could, and indeed did, act as a check on the committee. If the JCAR itself acted in a way clearly outside of legislative intent or necessity, changes could and would be made.

6.3 A New Responsibility--Reviewing Existing Rules

Ideology and a generally more conservative public opinion regarding regulation resulted in a major expansion in 1983 of JCAR function and responsibility. Reflecting the general concern about Michigan's continuing recession, the legislature directed the JCAR to begin systematic review of existing rules of the four state departments with the greatest direct regulatory impact on Michigan businesses and "business climate": the departments of Labor, Commerce, Natural Resources, and Public Health. In March of 1983, the JCAR constituted itself as a subcommittee for the purposes of conducting that review. The purpose was to identify those rules which were "obsolete, unnecessary, duplicative or unduly burdensome to business and industry in Michigan."[16]

The joint committee instituted a three phase review process which was very similar to that used in the promulgation and review of proposed rules. Public hearings in six different cities were held over a period of five months. Those testifying identified rules which they thought ought to be rescinded and others for which they requested modification, sometimes with specific recommendations as to the form of modification desired. The four departments were requested to do a similar internal

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16. "Administrative Rules Review of the Departments of Commerce, Labor, Natural Resources and Public Health: Preliminary Report," Joint Committee on Administrative Rules, State of Michigan, January, 1984, p.i.

review for rules which could be rescinded or modified.

The next phase called for the subcommittee staff (the JCAR assistant special counsel) to prepare a compilation and analysis of the complaints and recommendations which had been made at the public hearings. This process identified a number of issues, some of a very specific nature and others of more general scope. The departments were requested to prepare a written response to each of the issues raised and to present the response to the JCAR. In January, 1984, the committee began hearing the reports from the departments.

The dynamics of the subcommittee meetings were particularly interesting. This process was operating in addition to that of regular review of proposed rules. During the first five months of 1984, the committee was meeting twice a week most weeks, although not all members were always in attendance at both meetings. It was unusual, in fact, to have more than four members of the committee at a subcommittee meeting at any given time (although the four might vary through the course of a meeting); frequently only the chair and vice-chair of the committee would be present for the full duration of a subcommittee meeting. The subcommittee took no votes nor any other kind of official action on the matters it was hearing, but the lines between the subcommittee and the JCAR were very short. Those testifying seemed well aware that they had to respond in a fashion cognizant of the full membership and authority of the committee.

Department responses were of several kinds. In some cases, they agreed with the industry complaint that a rule should be rescinded or

modified and in those cases, most gave the subcommittee a timetable for the appropriate action.[17] This was usually presented in terms of when the committee could expect to have before it a proposed rule change dealing with the issue. Agencies which failed to volunteer such information were inevitably questioned as to when they expected to act.

There were other cases in which the department did not expect to act in conformity with the issue raised in the hearings. This could occur for several reasons. The agency might argue that it disagreed with the complaint, that the rule was in conformity with the statute, was being fairly enforced, etc. On the other hand, it might be in agreement on the issue, but argue the lack of personnel to do whatever was requested, or lack of statutory authority. Cases where the agency agreed with the complaint but lacked statutory authority to act were referred to the governor's office.[18] Table 6.3 summarizes the complaints received and their original treatment by the agencies.

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17. A rescission of a rule does not differ in treatment under the APA from any other proposed change to the Administrative Code. Simple agreement was not a sufficient basis for removing the rule from the code although it might not be enforced in the interim.

18. Gov. Blanchard appointed a special committee to review these complaints in particular. The committee will eventually recommend corrective legislation as they see appropriate.

Table 6.3. Number of Targetted Existing Rules, by Department and Identifying Source (Internal Review or Public Complaint) by Reported Department Response as of July 1984.

	Department										
	Commerce		Labor		Natural Resrcs.		Public Health		Source Totals		Row Total
	IR	PC	IR	PC	IR	PC	IR	PC	IR	PC	
Requires leg.	0	6	0	3	0	4	0	1	0	14	14
Will rescind	80	0	0	0	0	0	195	0	275	0	275
Will amend	147	1	115	11	55	25	304	3	621	40	661
Already amended	99	0	0	0	0	0	0	0	99	0	99
To comms,bds,etc	0	0	0	17	0	0	0	3	0	20	20
Further review	0	0	0	14	0	13	0	14	0	41	41
Resolved	0	2	0	13	0	4	0	5	0	24	24
Not resolved	0	7	0	24	0	36	0	0	0	67	67
Column total	326	16	115	82	55	82	499	26	995	206	1201*
Dept. total	342		197		137		525				1201
Dept/source %	28.5		16.4		11.4		43.7		82.8	17.2	

*Committee staff classified an additional 28 complaints as miscellaneous. Eight related to other departments; twenty, to "use of guidelines, directives, policies, and inter-office memorandums in lieu of administrative rules; staff interpretations of statutes/rules/guidelines; the administrative rules process and the organization of the Michigan Administrative Code." See "Administrative Rules Review of the Departments of Commerce, Labor, Natural Resources, and Public Health: Preliminary Report," Joint Committee on Administrative Rules, State of Michigan, January, 1984, p. iii.

Source: Extracted from "Administrative Rules Review of the Departments of Commerce, Labor, Natural Resources and Public Health: Interim Status Report," Joint Committee on Administrative Rules, State of Michigan, July, 1984, pp.3, 10-12.

All rules are not equal and certainly not those in Table 6.3. It shows that 82.8% of the rules marked for attention were identified by the departments themselves and only 17.2% were identified by the regulated businesses and industries. Those figures are misleading. In many cases, rules identified by the departments were rules not being enforced anyway. Those identified by the public participants, however, were uniformly rules currently being enforced; as such, they were sources of friction in the system.

Interest groups made a substantial investment in the review of existing rules. They organized testimony at the department hearings throughout the state, kept members informed through a variety of newsletters and personal contacts, had industry groups which screened and reduced complaints to a core minimum, and followed up with careful monitoring at the JCAR level, providing additional testimony as necessary. As indicated above, departments varied widely in their responses to public instigated complaints and there were a series of actors through which some changes would have to be processed, even after department personnel and industry representatives had come to agreement on a response. Testimony at one subcommittee meeting demonstrated one public participant's concerns about the problem of getting the necessary responses from these multiple actors. The director of industrial relations for the Michigan Manufacturers Association (MMA) told the joint committee:

> "We feel it is incumbent upon this committee to convey to the department and bureau heads our sense of urgency about this

> [requested rules changes.] It takes so long, and rules are just avoided at all costs. We have to get the S. Martin Taylors and the Bernie Lennons,[19] people at that level, involved. I'm not trying to speak for the bureau people, but this is critical. . . . For MESC,[20] none of the four commissioners were here today, nor any of the Board of Review. Any of the agreements we reach can be nixed by the autonomous commissions. It really rests with Martin Taylor—if he wants it, it will happen."[21]

The head of the joint committee responded that all of the issues would be "nailed down, one way or another, if not resolved before by the parties."[22] Pressed, he acknowledged: "We won't get them all; if we can bat .333 . . . [we will be doing well]."[23] The MMA representative replied they knew that but hoped for action on at least the items on which there was department and industry agreement.

At its August 14, 1984, summer recess meeting, the Joint Committee voted approval of twenty-one Public Health rules proposals, rescinding 195 obsolete rules identified through the department's internal review. (See Table 6.3.) Responding to a question from the committee alternate chairperson, the department representative confessed his personnel had not even known they had the right under the rules to inspect barber shops. Other rules rescinded were equally obscure or obsolete. Nonetheless, the committee commended the department for its cooperation

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19. Respectively, the director and deputy director of the Michigan Department of Labor.

20. MESC—the Michigan Employment Security Commission, one of the independent commissions.

21. David Zurvalec, Director of Industrial Relations, Michigan Manufacturers Association, testimony at meeting of subcommittee of Joint Committee on Administrative Rules, Lansing, Michigan, April 30, 1984.

22. Rep. Michael J. Griffin, meeting of Joint Committee on Administrative Rules subcommittee, Lansing, Michigan, April 30, 1984.

23. Ibid.

and expressed the hope that the others would take note. This was the first formal action resulting from the new process. While rescinding obsolete rules may seem at first glance purely symbolic it also has substantive effect. By removing such rules it increases the impact of others. Nonetheless, these were the easy rules to deal with. Others would prove more difficult.

Numerous transmittals on through 1984 involved rule rescissions but the joint committee and apparently some of the public as well ended the year with a strong sense of frustration regarding the process. In a January 10, 1985, letter requesting the governor's assistance, JCAR chairperson Michael Griffin noted that although 65% of the business identified concerns had been positively responded to, the process had, "in other respects, . . . been utterly frustrating".[24] He cited several ways in which the departments were being less than fully cooperative: burying small complaints in large packages which would take much longer to handle, not meeting scheduled submission dates, delays in the meetings of statutory advisory groups, and gaps in internal department communications. An attached letter from the director of regulatory affairs for the Michigan Manufacturers Association was even stronger.[25] It focused particularly on the failures of the Department of Natural Resources, noting among other complaints the DNR's penchant for dismissing a complaint in its summary report to the JCAR simply by

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24. For the letter, see Appendix C.

25. Included in Appendix C.

saying it "disagreed" and indicating no intention of any further consideration or action.[26] The new JCAR responsibility was no more easily discharged than the old.

Subcommittee work required additional investments by committee members and the institution alike. Members had to spend more time reviewing committee materials and additional supplies resulted in a $6,500 deficit in the first six months of the new review. The House and Senate leadership agreed to split the cost and to do the same thing with the next year's anticipated deficit. The committee notified the Department of Social Services (DSS) it was next and began to receive related materials from that department. The Department of Education was also informed that it was slated for 1985. Although those reviews are beyond the scope of this chapter and even of the dissertation, a few comments are appropriate.

Why did the Department of Social Services (DSS) finally become the focus of action? Rosenthal identified "legislative climate" as one of the conditions for substantive legislative oversight. Here there appears to be a favorable intersection of public opinion and committee membership. The heavily conservative committee would be taking on a currently popular target, fueled at least partially by several anti-tax ballot attempts and the recent recall elections.

There is a priori reason to expect the dynamics and perhaps outcome of review of Social Service and Education rules to differ from that of the Commerce, Labor, DNR, and Public Health reviews. There was

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26. See "Final Report: Administrative Rules Review of the Departments of Commerce, Labor, Natural Resources and Public Health", Joint Committee on Administrative Rules, State of Michigan, January, 1985.

testimony at one subcommittee meeting that some businesses were afraid to appeal DNR decisions out of fear of reprisal; that fear is undoubtedly even greater among DSS clientele. The process is unlikely to bring forth complaints from individual Social Services clients, even if notices were to be included with monthly checks. One JCAR member felt the problem of review of DSS or the Department of Education was that only the employees could really tell what the problems were, and they probably would not.[27]

The attitude of most current JCAR members is less favorable to DSS clients than it is to interests regulated by, for instance, the Department of Commerce. Opinion is not monolithic, however. One of the more liberal members thought it would be interesting to see if welfare regulations could be as nonburdensome as they were trying to make business regulation. In contrast, a more conservative member would like to see the current system completely disbanded, substituting block grants to the counties who would then devise their own social welfare programs. Whether committee members will use the review when it reaches them as an opportunity to effect policy changes remains to be seen.

It should be noted before leaving this chapter that committee staff changes in 1984 and 1985 had a bearing on several of these issues. The junior staff counsel had been assigned the responsibility of managing the review of existing rules. In 1984, the senior special counsel, who had worked eleven years for the committee was fired. One criticism of his work was that he had relied too heavily on the agencies. This may have signalled a committee desire to take a more independent, more

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27. Sen. Ed Fredricks, interview, Lansing, Michigan, March 8, 1984.

activist, perhaps even more adversarial stance relative to the departments. If so, that may account for some of the frustrations expressed in the committee chairperson's letter to the governor. Unfortunately, from the committee's perspective, it soon lost its now new senior special counsel and thus began the substantive review of the new departments with completely new professional staff. The process was slowed tremendously.

6.4 Assessing the Changes—Summary

Change was the most immediately apparent feature of government in Michigan in 1983; it was even more so for the Joint Committee on Administrative Rules. For the first time since the beginning of systematic legislative review of administrative rules in Michigan, the governor and the legislative majority were of the same party. The committee had new leadership and seven new members; the legislature as a whole, and the committee in particular, were generally recognized as more conservative than had been the recent case. Then 1983 recall elections further scrambled the committee membership and, indeed, resulted in split party control within the JCAR and the end of shared party control of the legislative and executive branches. Of what consequence have these factors been?

The 1983-84 Joint Committee members felt they had been given a mandate to even more carefully scrutinize administrative rules than had their colleagues in the past. They were also directed to begin a

comprehensive review of existing rules, a responsibility given to none of their predecessors. At the same time, with a governor of the same party as the legislative majority in 1983 there was the possibility of increased accord between the two branches and improved approval rates of newly proposed administrative rules.

The data show continuing decline in approval of administrative rules proposals throughout this time. From a mean period high of 87.5% under split legislative-executive control and negative veto in 1972-1977 to the next high mean of 73.5% approval under reverse veto from 1978-1982, approval declined to 70.7% in 1983 and again, to 68.9% or even 62.4% in 1984. Ideology seems to be interacting with the veto decision rule to make it increasingly difficult for Michigan administrators to gain legislative approval of the rules to implement statutes.

Some observers are concerned this situation will result in significant adjustments in the system, either through greater reliance on administrative alternatives (such as rule-making by adjudication, or greater use of administrative guidelines) or by increasing the incentive for opponents of the veto to challenge it in court. Committee members recognize the need for some constraint in their activities, and a proper balance of oversight and administrative authority. Yet they also joke in committee hearings about the number of rules they have or have not approved at a given meeting, about keeping up their average.

The time period of shared party control of the legislative and executive branches was so brief one cannot draw substantial conclusions about the impact of such control on rule outcomes. Most administrators drafting rules were persons hired into the civil service well before

Gov. Blanchard arrived on the scene. The dynamics of the Michigan political scene have yet to provide us the opportunity for a good test of competing institutional and party explanations of review outcomes.

The dynamics of interest group influence were especially apparent during this time period in the review of existing rules. Substantial group resources were invested in the process and the JCAR used for leverage in obtaining desired changes.

With Michigan rules approval down to 68.9%, it is even more difficult to maintain either the "runaway bureaucracy" or the "legislative capture" argument. It is easy to feel some sympathy for the apparently "constrained" bureaucrats who invest considerable time and professional commitment in drafting and shepherding proposals through the system only to lose them at the last step in the process.

Legislators apparently continue to find the review process worthwhile. The committee has continued to attract senior members from the House, and has attracted, even for it, an unusually conservative contingent from the Senate. The committee was provided full financial support for pursuing the review of existing rules of the first four departments. Rates of approvals in 1984 may prove to have been a reflection of a period of transition while administrators began making adjustments to a more conservative environment. They may yet have the opportunity to demonstrate bureaucratic learning in the terms described in Chapter 4. If the approval rate continues to drop, however, there would be cause for substantial concern about the health and benefits of the entire system. If major segments of the administrative apparatus eventually routinely get less than 60% of their rule proposals approved

they may well seek more cost effective means of providing the framework for program implementation.

Chapter 7

Summary, Conclusions, and Suggestions for Further Research

Three competing theories of legislative-bureaucratic relations within the legislative oversight context were posed in the first chapter—runaway, captured, and constrained. Chapter 2 presented a series of hypotheses designed to evaluate those three theories within the context of an exceptionally strong test case—Michigan, the state practicing the most extensive rule review current in the U.S. . Analysis incorporated a rational actor perspective, but was not based on a strict rational choice model because it was already clear there were noneconomic values operative in the system and uncertainty was a major element in the decision environment.

The first two theories were from the existing literature. In the older one, the bureaucracy was assumed to be out of control—"runaway." Legislative oversight was seen as important to reassert control and make the bureaucracy more responsive to the legislature, the people's representatives. Unfortunately, according to this model, there is little institutional or personal incentive for practicing the needed oversight.

The newer model assumed, on the contrary, that a highly effective but rarely noticed system of legislative oversight is already in place

and that bureaucrats act as they do in order to provide benefits desired by the legislators. The bureaucrats have been "captured". The standing committees, through which oversight is practiced, wield program approval and appropriations powers sufficient to bring balky agencies back into line in the rare event one should stray from legislator preferred paths. Legislator incentives for oversight activity are those resulting from the benefits associated with membership on the standing committees.

The above theories present a major problem in testing for they predict very similar results. In the first case, bureaucrats are likely to get what they want because the legislature lacks sufficient incentive to exercise control. In the second case, bureaucrats are likely to provide what legislators want as a condition for their agencies' and their own survival. In either case, bureaucratic proposals should enjoy legislative approval nearing 100%.

While this theoretical debate had been going on in the academic world something very interesting was happening in the real world of state government. There was a substantial increase in state adoption of overt oversight mechanisms. Neither of the existing models provided an explanation for this phenomenon. In addition, 73% of all states practicing a form of legislative oversight utilized a system which diverged from the congressional model in the location of the oversight responbibility. The operating assumption on which state action was based appeared to be one that said that more overt oversight was needed (contradicting the "captured" model) and could be efficacious (contradicting the "runaway" model). That assumption became the basis of the third model, which would be labelled the "constrained" bureaucrat

model.

Research was based on data concerning patterns of participation in, influence on, and outcomes of legislative oversight of administrative rules in the state of Michigan. It assumed that rational actors, whether viewed as institutions or individuals, would not make substantial investments in an enterprise which yielded few benefits. It examined Michigan's rules oversight system from the perspective of the legislative, executive, and non-governmental actors through a thirteen year period during which there were substantial changes in decision rules, partisan institutional relationships, and public opinion.

A number of the hypotheses posed in Chapter 2 have received substantial support, but not all. This chapter summarizes those findings and discusses their consequences for the larger questions.

7.1 The Findings in Review

Chapter 3 and and parts of Chapter 6 were devoted to the legislative branch. They examined several issues and presented multiple measures addressed toward several hypotheses: 1) that there was substantial visible, direct legislative oversight of administrative rules and that it was centered in the Joint Committee on Administrative Rules; 2) that institutions and individuals would make substantial investments in the review process; 3) that more stringent oversight mechanisms would result in lower rates of approval; 4) that individual JCAR member votes would vary in accord with conformity to authorizing

statute, personal voting history on the authorizing statute, regulatory ideology, and political party; 5) that approval rates would be higher under same party legislative-executive control than under split control; and 6) that approval rates would be lower and impasse higher under split party legislative control than under same party control.

The first substantial findings of this research were the degree to which Michigan's legislative oversight of the promulgation of administrative rules is a separate and visible process and the centrality of the Joint Committee on Administrative Rules (JCAR) within that process. All changes to the state's administrative code—rescissions, amendments, additions of new sections, or complete recodification—are formally transmitted to the JCAR, placed on a published agenda, and required to undergo a hearing before the committee in an open meeting. This is in addition to prior requirements of agency publication of and hearings on proposed rules. The joint committee handled over 1,600 transmittals in the first eleven years studied; in only three cases did the legislature fail to uphold the committee's decision. This pattern continued in the 1983-1984 data presented in Chapter 6; during this latter period the committee was never overturned. The obvious next question was whether this was merely pro forma review or a substantive exercise of legislative authority and decision making.

The committee was not merely rubber-stamping the bureaucrats' proposals. Approval rates at the beginning of the study period, 1972, were 94.4%; by 1984, they had declined to 68.9%. This decline in approvals was associated with the adoption of increasingly stringent oversight rules. Three aspects of oversight stringency were considered:

negative versus reverse veto, simple versus concurring majorities, and shorter versus longer allowed review periods. On all three measures, the more stringent rule was positively associated with significantly lower rates of approval.

Chapter 3 also documented a substantial pattern of increasing institutional investments in the oversight process. There have been direct and increasing staff support to the Joint Committee on Administrative Rules, expansion of the responsibilities and workload of the committee, and increases in the seniority and number of members serving on the committee. The JCAR started (in 1947) with only the staff support of individual member legislators, then had professional support from the Legislative Service Bureau, and finally, by the 1970s, had its own professional and clerical staff. It moved from review of proposed rules on a complaint basis (prior to 1972) to systematic review with negative decisions requiring legislative confirmation (1972-1977), to systematic review with full decision authority vested in the committee (1978-1984). In addition, in 1983, the committee's mandate was further expanded with directions to begin the systematic review of the existing rules of all agencies. From the beginning of systematic review in 1972, membership on the committee has shown increasing and high seniority, and membership has been increased to five from each chamber. In short, the Michigan legislature provided the institutional investments and structural incentives necessary to give substance to its strict oversight mechanisms.

The effectiveness of these institutional investments was reflected in individual legislator responses. Not only were senior members of the legislature assigned to the committee; they chose to stay there. Rate

of return of committee members and patterns of movement out of the committee showed the JCAR to be an attractive, important committee from the individual perspective. Only one returning JCAR legislator in the entire time period left the committee without assuming a major leadership position or an appropriations committee assignment.

The ways in which the oversight process operating through the JCAR provides institutional and individual benefits is complex. A first problem is that of training new JCAR members into their new role. They no longer have the latitude of the legislative "markup" sessions; indeed, they lack any formal power to amend. Informally, however, the threat of a negative committee action gives JCAR members' questions and suggestions a power not formalized in the statute. Learning to function in this new environment is sometimes frustrating for both legislators and the staff who advise them.

Four relatively simple models of individual JCAR member voting behavior were posited. The legal model was easily rejected. Rules proposals were required to have been certified by the attorney general's office before being transmitted to the JCAR. On rare occasions the JCAR counsel differed from the attorney general's office regarding the sufficiency of statutory authority but the incidence of these cases was far below the rate of withdrawals and disapprovals. Conformity to statute was necessary for rule approval but not sufficient, or virtually all rules would have been approved. The legal model failed to explain individual votes.

The personal history model, hypothesizing that the member's vote on the authorizing statute will predict vote on implementing rules, was rejected more for lack of relevance than for contrary evidence. The

problem here was that most rules proposals are based on old statutes on which current legislators never voted. On the other hand, interview data suggested the personal history question has been an issue for some time within the legislature, despite the limited number of cases involved. In the case where they may have voted on the statute, JCAR members expressed a commitment to acting in accord with "the will of the legislature." At least a few current and former members confessed, however, that they would probably be more stringent in their review of rules which represented a policy stance with which they disagreed.

Unfortunately, testing of the regulatory stance and partisanship hypotheses was hampered by the fact that individual voting records are continuously purged; individual records are maintained from only the most recent twenty-four months. From interview data, however, it was clear that the committee has attracted a disproportionate number of conservative legislators, particularly in recent years. A seat on the committee may well be an effective way of dampening the thrust of a generally more liberal legislature. At the same time, there may be institutional benefit in making this committee more conservative than the legislature's mean. Some respondents suggested the committee serves as a check on the legislative process as well as the administrative process. There are constraints, however. If JCAR members are overly zealous, systematically and doctrinairely rejecting administrative proposals, the executive branch may adopt other means of fulfilling its regulatory responsibilities. This hypothesis requires further study before definitive statements can be made about these relationships. At the individual level, however, party influence was difficult to separate from ideology and district-based factors, a not uncommon problem in this

type of research, further confounding testing of these hypotheses. The original statement of the hypothesis may well represent the real world, with a combination of these several factors rather than any single one of them being determinative.

Examination of the influence of party on an institutional basis was inconclusive. The year 1983 is the only time in the entire thirteen year period in which there was same party control of the legislative and executive branches. Comparing that year to earlier years under reverse veto (1978-1982) actually showed a slight decline in approvals, from the earlier average of 73.5% of rules approved to 70.7% in 1983, a difference "significant" at only the .40 level. Partially because this was the first year of government under new party control of the executive branch, however, it was argued that this was not yet a sufficient basis for rejecting the hypothesis that approval rates would be higher under same party legislative-executive control than under split control of these branches.

A closely related hypothesis was that split party control within the legislative branch itself would lower JCAR approvals and increase the incidence of impasse. Split party control within the legislature occurred in 1984 and affected the committee starting in mid-February. Compared to the previous year, the result was a very small decline in approvals, from 70.7% to 68.9%, significant at only .50. Even adjusting for the rescissions processed by the committee, the adjusted approval rate was 62.4%, with the difference having only a .20 level of significance. Obviously the first half of the hypothesis fails on the basis of these data. The other half, however, was tantilizing. There were no impasses in 1983, but three in 1984, too small a number for

meaningful statistical testing. As split party legislative control continues, a clear picture may emerge, but for the time being, the results are inconclusive. It may be that weak party effects exist, interacting with ideology.

Legislative norms of deferral to colleagues' district-based concerns seem to extend to the JCAR, providing at least one potential source of readily identifiable benefit to serving on the committee. Individual legislators were allowed by the committee to shape rules in policy areas of specific concern to their constituencies. Unless there were substantial department need to pass a given rule, the committee norm appears to be to require the departments to meet the concerns of any member of the committee. To suppose this is the entire story however would be to greatly oversimplify the real situtation.

JCAR members reported rarely being contacted by district constituents regarding pending administrative rules; contacts were much more likely from what I called "interest" constituents. Individual members of the committee are likely to specialize in certain policy areas, often but not necessarily and certainly not completely reflecting district based interests. To the degree that this is the case, they would presumably also be the target of specialized interest group attention.

A brief examination of campaign contributions appeared not to support the idea of specialized interest group contact, at least not on this basis. Legislators serving on the committee saw it as highly powerful, a mini-legislature which acted on everything. The breadth of action was reflected in campaign contributions, which came from virtually every major interest group in the state of Michigan. Interest

groups with high regulatory profiles were likely to contribute to several members of the committee and not necessarily those of only one party or a single regulatory stance. The pattern here is more in keeping with one of buying access than it is of concentrated attention to the election situation of a single candidate. Given the generally high seniority of committee members, perhaps this is not surprising. If they return to the legislature (and they frequently are from relatively safe districts), they are also highly likely to return to the Joint Committee. If not, the evidence is clear that they will go to another position of substantial influence. Thus, individual JCAR members attract contributions from a wide range of contributors often encompassing conflicting interests.

One key way in which the JCAR operates to increase benefits and reduce risks for institution and individuals alike is through its norm of coerced consensus. During recent years, if testimony at the JCAR hearing reveals unresolved disputes between department and regulated public the relevant parties will be instructed to "get their act together" and return with an acceptable alternative. Committee members justify this on the basis of their statutory authorization to review rules for "expediency". Its effect is to force participants to reveal their true preferences, and to reach self-determined compromise on those preferences. From the legislator's perspective, this operates as a highly effective strategy for reducing uncertainty—they need only endorse self-generated compromise. It would be difficult to construct a more successful risk averse strategy.

JCAR members fit fairly well Rosenthal's portrait of oversight specialists. They enunciated goals of making government work and liking

to learn the details of programs; they also liked getting that last bit of influence over policy. They tended to be among the workhorses of their respective chambers. House members were more clearly static in their political ambition than were Senate members, but in both cases, the subsequent careers of all members who have served on the JCAR at any time since 1972 show them overall to be more statically than progressively ambitious. The JCAR gives them a place to exercise substantial influence within their chosen situations.

Chapter 4 shifted to discussion of executive branch actors. Departments varied considerably in their success with the oversight process—approval rates varied by as much as twenty-five percentage points. They were alike, however, in that all departments saw their approval rates drop with the imposition of the reverse veto, the requirement that rules have the prior approval of the legislature. The departments averaging the greatest number of proposals over the years, however, dropped the least. Experience seems to have at least some value in this environment, so there is at least some support for a notion of bureaucratic learning in this context.

It was interesting in this regard to see what happened to rules which were originally rejected, whether withdrawn or disapproved. Under negative veto (1972-1977), 83.% of such rules (n = 79) were eventually passed in some form; only 12.7% were never resubmitted. Under reverse veto (1978-1982), 68.7% were eventually adopted, with 24.9% never resubmitted. Two conclusions were drawn from this. First, negotiatory skill is an important part of the Michigan administrator's competence; persistence pays off. Second, the more severe oversight rule is making it more difficult for administrators to achieve success, whatever their

skills.

The rules promulgation process is expensive. It involves staff time, costs of newspaper publication of notices, and communications charges at a minimum. Publication alone can cost over $9,000 per rule transmittal. Losing a rule, even if only a withdrawal, is thus to be avoided if at all possible. As a result, agencies engage in a variety of strategies in an attempt to achieve as high a rate of success as possible. They mobilize and coordinate public testimony before the JCAR to the degree they can, provide centralized processing within the department in some cases, "do their homework" with committee members and related staff, exercise care in selecting who represents them before the JCAR, increase the number of hearings held prior to transmitting a rule to the joint committee, refer to outside authorities, and sometimes, although usually cautiously, engage in agenda manipulation through the promulgation of emergency rules.

On the other hand, timing of submission of transmittals—the most frequently suggested strategy both in the literature and by informants trying to explain the reasons for the change to the reverse veto—seemed not to be occuring on any systematic basis; to the degree that it was, in was in the direction opposite to that which would be predicted. A greater percentage of proposed rules were submitted near the end of the spring session or early in the summer recess under the reverse veto than under the negative veto. Now, with the virtually year-round legislature, the power of the committee to meet during legislative interims, and the ability since 1978 to extend the review period to 90 days, it is difficult to construct what would constitute strategic timing in the Michigan case.

Lack of strategic timing notwithstanding, the key fact remains: bureaucrats do indeed pursue strategic activities. This was interpreted as further support for the argument that Michigan's legislative oversight of rules is substantive and that the designated review committee, the JCAR, is a force with which bureaucrats must reckon as they seek to advance professional-technical goals and standards.

It appeared that when departments could target legislator benefits they enjoyed greater success than in cases where there was great controversy and only generalized benefit to be realized. The Department of Natural Resources transmittals showed high approval of noncontroversial, localized rules (the watercraft and hunting control cases) but repeated difficulty with controversial, generalized rules (the water quality/Rule 57 case). In the situation where programs lack differential positive support, the departments have nothing to trade; the legislators' tendency is to wait until a consensus emerges for their confirmation. The result could be multiple withdrawals of a rule.

Gubernatorial involvement seemed highly strategic, limited to those cases simultaneously most likely to encounter difficulty and most important to the departments. The governor, and the departments, however, have several alternative courses of action should this particular part of the rules process fail them. Emergency rules can be promulgated, they can attempt to operate by guidelines, or can move to adjudication. The relative rate of emergency rules promulgation varied considerably. They ranged from 8.9% of the number of rules processed through the JCAR in 1972 to a peak of 18.5% in 1980 to a low of 5.7% in 1982.

While obvious needs for emergency rules exist, not all rules

promulgated through that special non-legislative review process seemed to fit the category. These cases were particularly interesting for their strategic elements. In cases where emergency rule promulgation simultaneously repealed an existing rule, the status quo position for further JCAR consideration was affected. Even though emergency rules could be promulgated for only a six month period, with one renewal allowed, this, it was argued, was one of the ways in which bureaucrats could exert greater agenda control in the face of the normal legislative review requirements.

The recent review of existing rules has shown the resilience of departments in resisting public desire for change. The letter by the JCAR chairperson (and its attachment from the Michigan Manufacturers Association) to the governor requesting his assistance in securing department and independent commission cooperation was an especially interesting example of the complexity of the process, the continuing independence of the agencies, and the use of the system by well organized groups. (See Appendix B.)

Chapter 5 showed the legislative review process to be an additional arena for lobbying rather than an alternative, with rare exceptions. An organization deliberately bypassing the earlier stages was likely to be caught by the committee and rebuffed. On the other hand, the committee would send a proposal back to the department if they were satisfied that someone's concern had not been sufficiently considered by the agency.

By being an additional lobbying point more than an alternative, legislative review has clearly raised the stakes in participation in the promulgation of administrative rules. Critics who fear this merely increases the "special interests" control of government have cause to be

concerned. On the other hand, the joint committee is not responsive only to special interests, if by that, one means large economic interests. Slightly more to the point might be a concern for "single interest" influence. Whether the right-to-lifers, the Michigan United Conservation Clubs, or the individual parent who had a daughter die in a state-licensed summer camp, a determined, single interest representative is likely to have an impact on the content of rules processed by the Joint Committee on Administrative Rules.

Despite the preceding statement, the preponderance of participation at the JCAR level is by well-organized, well-financed, and, most frequently, economically based interest groups. Business groups have several benefits available through participation in the oversight process. One result may be greater regulatory certainty. Another is uniformity. Yet a third is possible advantage compared to competitors in other states. These are in addition to the frequent argument that less regulation is an economic "good" on general principles. Major business umbrella groups such as the Michigan Chamber of Commerce and Michigan Manufacturers Association have their representatives in regular attendance at JCAR meetings and in frequent contact with committee members, staff, and agency personnel alike. Others maintain less frequent but equally intensive contact when a specific need arises.

Bruff and Gellhorn, and Lambert's concern that certain groups will get "the second bite at the apple" is well worth attention. The Michigan legislative review system is obviously open for full blown political influence. To isolate it from that, however, would return it to the realm of more closed decision making with presumably greater weight placed on professional-technical standards, values, and input.

The opening up of the process does indeed mean that some get a second bite at the apple; the alternative seems to deny it to everyone.

The Michigan experience contradicts both models posed at the beginning of Chapter 1. Levels of institutional and individual investment in the rules promulgation oversight function in Michigan are substantial, whether measured by seniority, workload, or staff support. The "runaway" model cannot account for this. The second model asserts that the bureaus are already under legislative control. If that were the case, one would expect legislative intervention in rules promulgation to occur very infrequently—rules should be almost routinely approved with very few being denied. Here, however, even under negative veto, there was documented legislative intervention in approximately fifteen per cent of the cases. Under the reverse veto, that figure sometimes exceeded thirty per cent. Even this under reports the degree of legislative intervention for, as pointed out, JCAR documents do not record committee-directed "lay-overs" or negotiations on "administrative clarification," both frequent occurrences.

It would also be extremely difficult to defend a rational actor perspective as the sole explanation for committee voting patterns and decision outcomes, unless one is willing to accept an expanded model in which non-economic, non-personal, benefits and goals are recognized. Concepts of the public interest or the proper role of government do play a part in these decisions. Many cases could probably be predicted on more conventional economic, or constituency benefit bases, but not all.

The model best supported by the findings was that of the "constrained" bureaucrat with its belief in the need for and efficacy of increased oversight. Bureaucrats seemed indeed to have been pursuing

something other than legislator goals, evidenced both by the rates of withdrawal and disapproval and the proportion of denied rules which were never resubmitted. The emplacement of more stringent oversight mechanisms, especially the requirement of prior legislative approval of administrative rules changes, was accompanied by lower rates of approval, regardless of whether each transmittal was measured as a separate unit or resubmitted cases were tracked and evaluated only on the basis of their eventual outcomes. The use of the more stringent oversight mechanisms made it more difficult for bureaucrats to do what they wanted and easier for legislators to achieve their own ends.

The system has resulted in legislators directing bureaucrats into more "acceptable" behavior, eventually achieving adjusted approval rates of over 90%. The continuing rate of personal and institutional investment in this system indicates that this state legislature, at least, has not found more overt mechanisms of control counterproductive.

It appears that legislative and bureaucratic incentives are interacting in a fashion which is responsive to the public. The driving force of the legislative (electoral) imperative shapes the professionally-oriented bureaucratic (survival) decision environment. The review process exercised through the Michigan Joint Committee on Administrative Rules offers non-governmental actors a forum unique for its intersection of these interests.

1.2 Where Next? Suggestions for Further Research

Three major problems remain for resolution as a result of these findings. First, there is at least one alternative major explanation which needs to be systematically tested. Secondly, there should be systematic investigation of the influence of various factors on the individual JCAR member voting decisions. Finally, a specifically predictive model needs to be developed, testing in a comprehensive fashion the relative contributions of the multitude of factors probably affecting outcomes. This could be done both at the individual and committee levels.

This study found a substantial relationship (gamma = .428) between the type of veto rule and outcomes, with approval declining under the more stringent legislative oversight mechanism. Shifts in the balance of regulatory ideology among JCAR members could also account for this difference. Construction of a regulatory index score for each JCAR member through time could provide the basis for testing such an alternative. Such an index might be based on votes on relevant legislation; its greatest problem would be maintaining comparability over time. This or a separate measure might incorporate information on interest group endorsement of candidates, but may not be available for all JCAR members nor on a sufficiently complete basis.

I suspect the influence of regulatory ideology is actually interactive with change in veto rule. Change in the rule in Michigan

took place in the middle of a legislative session. No members of the committee changed at that time, but approvals dropped 7.1%. (See Table 3.5.) Contingency analysis of the difference yields a X^2 of 1.91, significant at the .20 level, and a gamma of .193. While the 20% level is generally regarded as unsatisfactory for hypothesis testing of this type, people involved in real world politics would probably think these were great odds. On the other hand, even if we were willing to accept this as a strict test, the relationship is fairly weak at .193. The veto rule is obviously only one influence on outcomes.

Statistical analysis in this research was conducted entirely at the aggregate level. More systematic investigation of determiners of individual voting decisions could add greatly to our understanding of these phenomena. Data need to be collected on individual districts, more on campaign contributions and endorsements, regulatory ideology (as suggested above), perhaps indicators resulting in business/commerce and union support indexes, personal votes on authorizing statutes and rules transmittals, and even the size of the majority in the member's chamber on recent authorizing statutes.

Collection of the type of data suggested above would allow the creation and testing of a comprehensive model of outcomes of legislative oversight of administrative rules. Individual level data could be used to predict individual votes as well as aggregated to predict the committee outcome of a given rule.

Probit testing would be appropriate in this context since the

dependent variable would be a simple dichotomous variable—a yes or no vote, or approval against all other outcomes.[1] Probit analysis would yield information not directly obtainable through cross-tabulations. It would allow the simultaneous consideration of the effects of several variables on the individual voting decision and the outcome of the JCAR votes on proposed rules. In addition, because probit estimators are computed in the context of their contribution to the probability (range "0" to "1") of a given outcome, the relative weights of a specific variable can be compared across time periods.[2] Such comparisons would allow us to more clearly interpret the simultaneous effects of several variables than would be possible through contingency analysis even with a series of controls. It would make it possible to test the degree to which the included variables account as a group for observed transmittal outcomes and to see how their relative influence may vary under different conditions, most specifically, under conditions of negative and reverse veto. In addition, models generated from the first two time periods could be tested against data from the third time period, where changes in factors other than the veto rule may prove to have significant impact.

Obviously, substantial work remains to be done. I believe it worth our while.

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1. Actually, in the committee vote probit model, it might be possible to predict withdrawals separate from other non-approvals.

2. See Aldrich and Cnudde, 1975, and Pindyck and Rubinfeld, 1981, Chapter 10, for discussion of the merits and interpretation of probit estimators and predictions.

1.3 Extending the Findings

Michigan's review process, and changes in that process, demonstrate a system of multiple influences, with different actors in charge in different portions of that system and under different circumstances.

What are the key elements of the Michigan system which seem to account for the observed results? First, the system is highly centralized, maximizing benefits for those legislators who are predisposed to participate in this type of activity. The rules oversight function is formally separated from other standing committees and traditional forms of review, allowing legislators to specialize in this unique role.

Second, the committee has been invested with substantial power and resources, increasing the value of serving on it and linking personal motivations and institutional incentive structures. Both institution and individuals gain as a result, with the institution satisfying oversight values while requiring little personal effort by most of its members.

Third, Michigan's full-time, year-round legislature means legislators are able to invest more of their time in legislative activity than would be the case for part-time legislators. Given that oversight takes second place to legislation for most legislators, increasing the total time available increases the likelihood that oversight will get some portion of it. An additional effect is

legislator year round physical availability for regular meetings. They are much more likely to meet if already in the capital than if they have to be called together from throughout the state.

Next, and an additional critical governmental factor, is the presence of a long established, independent civil service. Some may see this as an obstacle, others as the only saving element in the entire picture, but at a minimum, it provides the balance which allows the system to work, something easy to lose track of in the focus on legislative oversight. Michigan's professional civil servants do indeed bring their own, independent, values, goals, and standards, their own experience and expertise to the rules promulgation process. Without it, the choices would be a truly "captured" bureaucracy or possibly machine-type political disbursement of resources.

Finally, an undoubtedly important outside factor is a public generally supportive of regulation although in recent years it has reflected the growing conservatism observed nationwide. The committee is responsive to these changes, particularly so as a result of the legislative mandate to review and reduce the "burdensomeness" of existing rules. This alone must account for some of the decline in approval rates, although there is no direct way of measuring it. I prefer to think of it as an interactive effect with the greater legislative control being not only an expression of institutional values but also representative behavior in response to public demand. The result is a more difficult existence for bureaucrats.

What do these results and factors suggest for other states?

First, current political opinion in most areas of the country would

seem conducive to greater legislative oversight. There is no way to predict how long that environment will be maintained. If state legislators are serious about asserting greater responsibility in this area, this would seem an ideal time.

Second, states are increasingly professionalizing their public employee structures. To the degree that they do so they will create one element of the balance necessary for this system to work. States without such a system in place face a much more difficult task. It is my belief that to accomplish the same quality output without such a staff would require much more legislative input that anyone is likely willing to give, whether from institutional or individual perspectives. This factor may make the Michigan level of legislative oversight inappropriate in some states.

Finally, looking at the legislative factors, I believe the centralization of the Michigan system to be the single most important factor in its effect. By removing the oversight responsibility from the traditional standing committee location, it has provided a sufficient concentration of resources and incentives to attract a few predisposed members of the legislature to specialize in this unique role, simultaneously accomplishing personal and institutional goals. In a state in which oversight is currently a very minimal level activity, it may be possible to initiate this type of oversight centralization with minimal disruptions of existing relationships. On the other hand, if in a state where some standing committee based rules oversight occurs, transition to a centralized system might be accomplished through dual committee assignments, initially drawing oversight committee members

from those who are currently most active in oversight activities in the old committees. To the degree that existing committee chairs or other committee members are unwilling to relinquish any area of jurisdiction, however, there will be problems with even this strategy.

I have not attempted to assess the degree to which Michigan's system relies on the current year round schedule. As demonstrated in Chapter 1, in the early years of the Joint Committee on Administrative Rules, Michigan had a part-time legislature; the committee was empowered to meet and suspend rules during legislative interims. Throughout the era of systematic, routine review covered here, however, Michigan had a fulltime legislature. Could such a review system be maintained under conditions of a part-time legislative schedule? Possibly, if certain conditions were met. If substantial institutional resources and significant substantive authority were invested in a centralized committee it still might be possible to attract the requisite level of personal investment necessary to make such a system functional.

1.4 The "Bottom Line"--a Final Word

Clearly, it is possible to create a system of legislative oversight which will attract sufficient personal investments to make a difference. In the Michigan case, increased severity of legislative review requirements resulted in lower rates of approval of administrative rule proposals. Not all observers would agree this is to

be desired.

What is my opinion of the Michigan process of legislative oversight of the promulgation of administrative rules? It further opens administrative processes to the public in an arena where their voice has more weight, even if not all participate equally. Given the apparently necessarily increasing role of administratively determined regulation in the lives of American citizens, I think this is important. Despite the problems this poses for those who lack resources to sustain both the legislative battle and the rules promulgation battle, I think the net result is positive. The ensuing rules are not necessarily those which committed professionals in each of their respective fields would like to see, nor even those I would prefer. Nevertheless, I believe that overall the state has more workable rules, which in the real world usually means better ones.

I believe Michigan is better off for its increased investment in overt legislative oversight of administrative rules.

APPENDICES

APPENDIX A

APPENDIX A

Rules Transmittals: 1977

The following table shows all rule transmittals received by the Joint Committee on Administrative Rules during 1977, the last year of review under the negative veto rule. (List includes a case received on December 30, 1976, but numbered by committee staff as the first 1977 transmittal.) The final column, labelled "O", is the outcome column. Outcomes in that year are:

1 Approval—no action
2 Approval, committee vote
3 Withdrawal
7 Disapproval
9 Other

Among the 1977 cases are examples of:

a. Approval through lack of committee action, e.g., #s 002, 018, 038.

b. Approval by committee vote, e.g., #s 003-004, 006-009.

c. Agency withdrawal of a rule, e.g., #s 001, 005, 010-011.

d. Resubmittal of a withdrawn rule, e.g., #026 (code #285.817.1+), submitted one day after #019 was withdrawn, and #039 (code #285.627.1+) submitted the same day #027 was withdrawn.

e. Disapproval of a rule, e.g., #s 067, 093, 100, 103+. Number 103+ is a rare occurrence of a transmittal split subsequent to its submittal to the JCAR. Transmittal "103" was approved, "103+" was disapproved.

f. Resubmittal of a previously disapproved rule, e.g., #115, code #436.1101+, a resubmittal of #067. This transmittal came in too late to be resolved in 1977 and died (outcome code "9" --other) under stipulations implementing the new reverse veto amendments. Resubmitted as #015 in 1978 (not shown), it passed.

Cases designated "H-" (see #041) are examples of localized hunting restrictions; those identified by "W-" (see #012) are localized controls on watercraft use.

Table A-1. Administrative Rule Proposals Transmitted to the JCAR with Administrative Code Number, Dates Received and Acted Upon, Days Elapsed, and Outcome: 1977.

Dept	Trns #	Subject	Administrative Code No.			Date Rec'd	Acted	DE	O
DNRS	001	Betsie River Natural R Zoning	281	31	c	12 30	2 22	54	3
PbHlt	002	Minimum stds, hosps-maternity	325	1051		1 12	3 14	62	1
PbHlt	003	Program match requirements	325	4151	c	1 17	2 15	29	2
Agric	004	Mutuals	431	51	c	1 26	2 15	20	2
DNRO	005	Oil & gas operations	299	1101	c	2 1	3 9	36	3
DNRO	006	Polychlorinated biphenyls	299	3301	c	2 4	3 1	25	2
Comrc	007	LCC-declaratory ruling	436	1971	c	2 11	3 1	18	2
Labor	008	Agricultural tractors	408	45101		2 14	3 22	36	2
Labor	009	Farm field equipment	408	45301		2 14	3 8	22	2
Labor	010	Agric powrd industrial trucks	408	45201	c	2 14	3 21	37	3
Labor	011	Head protctn equip,ag operatns	408	46101	c	2 14	3 21	37	3
DNRL	012	W-Commerce Lake, Oakland Co	281	763	43	2 28	3 22	22	2
DNRL	013	W-Galien R,New Buffalo Hrb,Ber	281	711	2 f	2 28	3 22	22	2
DNRL	014	W-Galien Rv, Berrien Co	281	711	3	2 28	4 21	52	3
LcReg	015	Pharm Bd-regstrd pharmcst exam	338	474		2 28	3 29	29	2
DNRS	016	Betsie River Natural R Zoning	281	31	c	2 28	3 29	29	2
Comrc	017	LCC-beer:nonreturnable contnrs	436	1627		3 3	3 29	26	2
Labor	018	Plumbing Code	408	30701	c	3 10	5 10	61	1
Agric	019	Qrtr hrs brdrs awrds,suplmnts	285	817	lc	3 10	3 29	19	3
Labor	020	Electrical code	408	30801	c	3 11	4 5	25	2
Agric	021	Prevntg spread of brucellosis	285	123	lc	3 14	4 5	22	2
Agric	022	Dispsl bruc'll's exposd animals	285	156	1	3 14	4 5	22	2
Educ	023	Direct student loans	390	1601	c	3 15	5 3	59	2
Labor	024	Barrier Free Desgn Bd-gen rls	125	1001	c	3 28	5 3	36	2
State	025	Campaign finance reporting	169	1	c	3 29	4 1	3	3
Agric	026	Qrtr hrs brdrs awrds,suplmnts	285	817	lc	3 30	4 5	6	2
Agric	027	Care nrsry stock,sales outlts	285	627	lc	3 31	5 12	42	3
LcReg	028	Real estate schools	338	2601	c	3 31	5 26	56	3
State	029	Campaign finance reporting	169	1	c	4 1	4 5	4	2
Agric	030	Quarter horse racing	431	71	c	4 7	4 26	19	2
DNRL	031	W-Gun Lake,Barry Co	281	708	8	4 13	5 17	34	2
Agric	032	Landscape Archtct Bd-exam prcd	285	901	4	4 14	5 17	33	2
DNRO	033	Oil & gas operations	299	1101	c	4 18	5 3	15	2
DNRO	034	General-obsolete	299	1	c	4 18	5 17	29	2
DNRO	035	Cleaning agents,water condtnrs	323	1173		4 18	6 17	60	3
Educ	036	School social worker	340	1001	c	5 2	6 7	36	2
Educ	037	Legislative merit award prgrm	390	1501	c	5 4	6 7	34	2
Educ	038	Teacher certification code	390	1125	c	5 6	7 6	61	1
Agric	039	Care nrsry stocks,sales outlts	285	627	lc	5 12	5 17	5	2

Table A-1 (cont'd.).

Dept	Trns #	Subject	Administrative Code	No.			Date Rec'd	Acted	DE	O
Labor	040	Ski Area Sfty Bd-ski lifts	408	101	cd		5 16	6 7	22	2
DNRL	041	H-Milford Twp,Oakland Co	317	163	42	r	5 16	6 21	36	2
Comrc	042	PSC-Michigan gas safety code	460	14008	c		5 19	7 7	49	2
DNRL	043	W-Hardwood Lake,Ogemaw Co	281	765	14		5 23	6 21	29	2
DNRL	044	W-Lake Montcalm,Montcalm Co	281	759	8		5 23	7 5	43	3
DNRL	045	W-Healy Lake,Manistee Co	281	751	6		5 23	6 21	29	2
DNRL	046	W-Lake Fenton,Genesee Co	281	725	14		5 23	6 21	29	2
State	047	Dealer designation	257	21	c		5 23	7 7	45	2
Educ	048	Driver education	388	312	c		5 24	6 28	35	2
DNRL	049	H-Highland Twp,Oakland Co	317	163	40c		5 24	6 21	28	2
Educ	050	Schl dist pupl acct,dstrb aid	340	2	c		5 26	6 28	33	2
Highw	051	Drainage assessment	280	1	c	a	6 1	6 28	27	2
Comrc	052	LiqCC-attire,conduct on-premise	436	37	c		6 3	8 3	61	1
DNRO	053	Wilderness & natural areas	322	49	1c		6 8	8 2	55	2
Agric	054	Commercial feed	285	635	3c		6 14	8 2	49	2
Agric	055	Premium altmnts to fairs,shows	285	811	1c		6 14	8 2	49	2
MilAf	056	Rental of armories & grounds	32	3			6 16	8 2	47	2
DNRO	057	Cleaning agents,water condtnrs	323	1173			6 21	8 21	61	1
DNRO	058	Flood plains & floodways	323	1311	c		6 23	8 2	40	2
LcReg	059	Physcl Therapy Reg Bd-gen rls	338	1131	c		6 24	8 2	39	2
Comrc	060	Stds rate filng physcn prof ins	500	901	c		6 30	7 7	7	2
Comrc	061	Liq Con Com-licens'g qualfctns	436	1101	c		7 6	7 22	16	3
Labor	062	Automotive service operations	408	17201	c		7 8	9 8	62	1
Agric	063	Food Inspctn Div-last day sale	285	554	1c		7 13	8 2	20	2
Labor	064	Fire fighting	408	17401	c		7 21	9 21	62	2
AtGen	065	Consumer Protection Act	14	51	c		7 21	9 21	62	2
PbHlt	066	Control of tuberculosis	325	898			7 21	9 21	62	2
Comrc	067	Liquor Control Commission	436	1101	c		7 22	9 21	61	7
DNRO	068	Air Pollt'n Control Com-gen rl	336	28	c		7 22	9 21	61	2
Labor	069	Elevator Sfty Bd-existg instln	408	8205	c		7 28	9 28	62	1
Corr	070	General rules	791	1101	c		7 28	9 27	61	2
Labor	071	Elevator Safety Bd-general rls	408	8149	c		8 3	9 27	55	2
Labor	072	Emply Sec Com-publ partp, mtgs	421	351			8 8	10 4	57	3
LcReg	073	Nursing Home Admstrtors-exams	338	2811			8 11	9 27	48	2
Educ	074	Use schl bus trnsp senior ctzn	340	231	c		8 12	9 27	46	2
DNRO	075	Commercial fishg-yellow perch	299	815			8 18	9 27	40	2
DNRO	076	Commercial fishg-closed seasns	299	1075			8 18	9 27	40	2
State	077	Special farm vehicle permit	257	51			8 18	10 4	47	2
DNRL	078	W-Valley&Wildwood Lks,OaklandC	281	763	54		8 22	10 4	43	2
LcReg	079	Pharm Bd-cntrld sbstncs:regtrn	338	3131			8 25	10 25	61	2
DNRL	080	W-Round Lake,Oakland Co	281	763	52		8 30	10 4	35	2
DNRL	081	W-Lake 28,Mecosta Co	281	754	11		8 30	10 4	35	2
DNRL	082	W-Galien R&New Bufflo Hrb,Ber	281	711	2		8 30	10 4	35	2
MilAf	083	Dept org & gen functions	32	11	c		8 31	10 25	55	2
Comrc	084	Securities Bur-debt management	451	1201	c		9 12	11 10	58	3

Table A-1 (cont'd.).

Dept	Trns #	Subject	Administrative Code No.			Date Rec'd		Acted		DE	O
DNRO	085	Public access stamp program	299	981	c	9	15	10	25	40	2
PbHlt	086	Health maintenance organiztns	325	6101	c a	9	21	11	16	56	3
DNRL	087	H-Summit Twp,Jackson Co	317	138	2c	9	26	11	10	46	3
LcReg	088	Nursing Home Admstrs-cont educ	338	2841	c	9	28	11	15	50	2
DNRL	089	H-Bagley Twp,Otsego Co	317	169	1	10	10	11	15	36	2
LcReg	090	Pharm Bd-cntrld sbstncs-sched2	338	3116		10	13	11	15	33	2
State	091	Motor vehicle service & repair	257	111	c	10	14	12	14	61	1
LcReg	092	Pharm Bd-cntrld sbstncs-schld4	338	3123		10	18	11	15	28	2
LcReg	093	Osteopthc Med & Surg-pbl rcrds	338	141		10	18	12	15	58	7
MgtBd	094	Lottery Bur-millionaire party	432	201	c	10	20	12	13	54	2
Comrc	095	PSC-motor carrier safety	460	16101	c	10	26	12	13	48	2
Comrc	096	Ins Bur-nonprofit hosp srv crp	550	1	c	10	27	12	13	47	2
SocSv	097	State Housing Dev Auth-gen	125	101	c	10	28	11	15	18	2
SocSv	098	Stt Hsg Dev Auth-dev fund grnt	125	151	c	10	28	11	15	18	2
LcReg	099	Pharm Bd-cntrld sbstncs-schld5	338	3125		10	28	12	6	39	2
LcReg	100	Real estate schools	338	2601	c	10	28	12	13	46	7
State	101	Licensing vehicle brokers	257	181	c	10	20	12	28	61	1
PbHlt	102	Supplying water to the public	325	371	c	10	30	12	6	36	3
LcReg	103	Dentistry Bd-dentistry rules	338	201	c p	10	31	12	13	43	2
LcReg	103+	Dentistry Bd-dentistry rules	338	4115	s	10	31	12	13	43	7
Comrc	104	PSC-transptn of migrant wrkrs	286	1	c	10	31	12	29	59	3
DNRL	105	W-Arnold Lake, Clare Co	281	718	11	11	1	11	29	28	2
DNRL	106	W-Cranberry Lake, Clare Co	281	718	12	11	1	11	29	28	2
DNRL	107	W-Bellew Lake,Benzie Co	281	710	7	11	1	11	29	28	2
DNRL	108	W-Bellew Lake, Gr Travers Co	281	728	9	11	1	11	29	28	2
DNRL	109	W-Lake Lancelot,Gladwin Co	281	726	1	11	1	11	29	28	2
DNRL	110	W-Bronson Lake, Benzie Co	281	710	6	11	1	11	29	28	2
DNRL	111	W-Galien R,Berrien Co	281	711	3	11	1	11	29	28	2
LcReg	112	Medical Practice Bd-pbl rcrds	338	2391		11	1	12	15	44	7
LcReg	113	Med. Practice Bd-amphetamines	338	2303		11	1	12	15	44	2
Comrc	114	Debt management	451	1201	c	11	30	12	15	15	2
Comrc	115	Liquor Con Com-lcnsg qualfctns	436	1101	c	12	6	99	99	99	9
PbHlt	116	Supplying water to the public	325	10101	c	12	7	12	13	6	2

Source: Compiled from "Daily Status Report", unpublished daily log of Joint Committee on Administrative Rules, Legislature, State of Michigan.

APPENDIX B

APPENDIX B

Rule Approval by (Selected) Department by Year and Veto Period, 1972-1982

The following table shows success rates for cases from 1972 through 1982 (the period of split party legislative and executive branch control) for those departments which averaged at least two cases per year over the eleven year period.

Departments are listed in order of the total number of rule transmittals submitted, those with the fewest being first. The Department of Natural Resources (DNR) had the greatest number of cases and is thus last. DNR data are given for: a) all cases, b) local cases (local hunting and watercraft regulations), and c) all other cases.

For discussion, see Chapter 4, page 122 and subsequent references.

Table A-2. Annual Number of Rules Transmittals and Per Cent Approved for Twelve Departments (including additional DNR breakdown) by Veto Period, 1972-1982.

	Negative Veto Period							¶	Reverse Veto Period					
Dept.	1972	1973	1974	1975	1976	1977	Total	¶	1978	1979	1980	1981	1982	Total
Treas	1	3	2	2	1	1	10	¶	3	4	1	3	3	14
	100	67	100	100	100	100	90	¶	67	100	0	33	67	64
MgtBd	1	1	3	1	1	1	8	¶	0	2	6	1	12	21
	100	100	100	100	100	100	100	¶	na	50	50	100	50	52
State	0	0	2	5	2	6	15	¶	1	4	8	5	5	23
	na	na	100	60	100	83	80	¶	100	75	75	40	40	61
StPol	4	2	0	1	1	0	8	¶	2	7	4	9	7	29
	75	50	na	100	100	na	75	¶	100	57	75	67	71	69
ScSrv	3	3	6	5	1	2	20	¶	6	6	13	1	2	28
	33	100	50	80	100	100	70	¶	50	17	77	100	100	67
Educ	12	7	4	5	5	7	40	¶	6	1	12	4	6	29
	92	100	100	100	100	100	98	¶	67	100	58	75	100	72
Agric	6	8	5	5	9	12	45	¶	12	8	7	5	10	42
	100	100	100	100	89	93	93	¶	75	75	86	80	90	81
PubHl	3	9	5	8	11	6	42	¶	5	10	18	22	8	63
	100	100	60	88	82	67	83	¶	60	70	44	68	38	57
Comrc	4	4	6	17	16	13	60	¶	23	15	21	19	16	94
	100	100	83	88	81	62	82	¶	74	87	71	79	81	78
LcReg	5	9	10	7	24	16	71	¶	30	21	23	23	17	114
	100	89	70	71	75	69	76	¶	53	62	91	83	71	71
Labor	20	13	39	25	53	15	165	¶	14	30	14	29	33	120
	100	92	97	44	100	67	87	¶	79	87	79	79	85	83
DNRall	28	70	89	48	48	45	328	¶	58	43	30	43	16	190
	93	90	90	96	92	87	91	¶	85	74	73	79	100	81
(DNRl)	16	53	71	36	38	31	245	¶	48	23	18	25	11	125
	94	94	94	97	97	90	95	¶	94	96	83	84	100	91
(DNRo)	12	17	18	12	10	14	83	¶	10	20	12	18	5	65
	92	77	72	92	70	77	80	¶	40	50	58	72	100	60

APPENDIX C

APPENDIX C

Letters to:

1. The Honorable James J. Blanchard, Governor
   (from Michael J. Griffin)

2. The Honorable Michael Griffin, House of Representatives
   (from Deborah K. Hoover, Michigan Manufacturers Association)

For discussion, see Chapter 6, p. 199 , and Chapter 7, p. 219.

REP. MICHAEL J. GRIFFIN
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REP. VIRGIL SMITH, JR.

THE LEGISLATURE

LANSING, MICHIGAN

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January 10, 1985

The Honorable James J. Blanchard
Governor of Michigan
State Capitol Building
Lansing, Michigan 48909

Dear Governor Blanchard:

In March of 1983, at the request of Speaker Gary Owen and Senate Majority Leader William Faust, the Joint Committee on Administative Rules began a comprehensive review of the administrative rules of the Departments of Commerce, Labor, Natural Resources and Public Health to determine which administrative rules of these departments were obsolete, unnecessary, duplicative or unduly burdensome to business and industry in Michigan.

After nearly two years of work, this review has come to an end. Some of the results are impressive--the Departments have responded positively to over 65% of the business complaints and have made commitments to amend or rescind the necessary rules. These commitments have all been submitted to the Joint Committee with a time schedule which provides projected promulgation date. In addition, as part of the review, each department did an internal audit of their rules to identify those which were burdensome or unnecessary. Hundreds were identified. The Department of Public Health has already rescinded 195 obsolete rules.

In other respects, this review has been utterly frustrating. It was never the intent of the Joint Committee to turn the review process into a confrontation with the state departments. Rather, it was hoped that the executive and legislative branches would work closely with one another in an effort to improve Michigan's business climate. This cooperative effort in many cases has simply not occurred. Particularly discouraging was our last Committee meeting on December 17, 1984, where each of the department's presented a status report of the issues raised regarding their department's administrative rules.

Several areas of concern discussed at this meeting include:

1. Some of the complaints raised by business and industry in which the Department's agreed to make changes in rules could have been handled expeditiously. Instead, the Departments (particularly the Natural Resources Department) made these proposed rule changes part of larger, more controversial rule packages that may not be ready for rule promulgation for a year or longer.

2. Although each department has committed to a time certain for submission of amendments or rescissions to rules, these time schedules have not been followed. Instead, new schedules have been made with "amended" dates.

3. There have been lengthy delays in the meetings of several advisory groups who must consider rule changes before they go through the rulemaking process (due to an inability to get a quorum or other internal difficulties). This has postponed the discussion and resolution of many issues for nearly the full two years.

4. In some instances, there has been a lack of communication between a department liaison and the heads of agencies within his/her own department regarding preparations needed to respond to the issues and make appearances before the Joint Committee.

In addition to these concerns, I received on December 10, 1984, a letter from the Michigan Manufacturers Association which I have enclosed. This letter points out more frustrations regarding this review and their sense of disappointment.

Because of the situation outlined above, I have asked Barbara McLeod and Pete Plastrik of your Cabinet Council to assist us in tying up the loose ends.

This State needs a reduction in red tape - not excuses and inexcusable inaction. We have worked diligently over the past two years and would like to see the fruits of our labor. This cannot be done without the cooperation and assistance of the executive branch.

We urge your active participation in persuading these departments to resolve outstanding issues and to follow through with their commitments in a timely manner. I look forward to your response.

Sincerely,

MICHAEL J. GRIFFIN
Chairman

MJG:jm

enclosure

cc: Speaker Gary M. Owen
Senator William Faust
Members of the Joint Committee

Michigan Manufacturers Association
124 East Kalamazoo Street — Lansing, Michigan 48933-2182 — Phone: Area Code 517 372-5900

December 20, 1984

The Honorable Michael Griffin
Chairman, Joint Committee on
Administrative Rules
Capitol Building
Lansing, Michigan 48901

Dear Mike:

I believe it important to convey to you the reaction of MMA to the committee's follow-up meeting with the state agencies regarding the rules review project which you initiated over two years ago.

You, your committee, the MMA committees, and many others, all worked very hard and sincerely to identify important areas of concern in current rules and bring them to the attention of the agencies. We applaud your efforts and your sensitivity to the burdensome regulatory climate which we are often faced with in Michigan.

However, in witnessing the response of the agencies to our efforts on December 17, we were taken aback at their apparent lack of response and concern for the issues at hand. MMA member companies and our staff spent months preparing comments and did extensive research on major areas of concern which I feel were met with an attitude of indifference on the part of some agency representatives. We would not have brought up issues before your committee which we did not feel impact severely on the business community. Yet, we were told on December 17 that many of the complaints which we brought before the DNR were considered too unimportant to address.

The MMA Natural Resources Committee will be thoroughly reviewing the DNR status report handed out on December 17 and will comment in more detail at a later date. However, our initial and general reaction to the DNR's follow-up is one of disappointment and frustration for the following reasons:

1. In our view, The DNR has not done an adequate or satisfactory review of many complaints and has only reviewed a small portion of the issues.

Michigan Manufacturers Association

2. The DNR has been extremely slow, has not met deadlines, and has blamed the delays on a number of issues taking "precedence". This is not realistic considering the length of time they have had to complete their review. Certainly, delays could be minimized now by separating out individual issues and pursuing them, rather than working on the entire package.

3. In our opinion, the attitude displayed by some of the DNR staff on December 17 was one of indifference and nonchalance to the importance of the issues, as mentioned before. Again, our members did not pick trivial issues to bring to your attention. In fact, we narrowed the list down from about 30 to only the most critical issues as perceived by the industrial community.

4. It appears that the DNR considers their review sufficient whereas MMA believes it to be grossly incomplete. It is not satisfactory to MMA to hear the DNR say all too simply that they "disagree". Some type of discussions on the merits of some of the rules between all parties is needed.

5. The DNR mentioned what it had done with regard to rules for fugitive dust, Rule 57, and hazardous waste. MMA never brought up complaints with regard to these issues, and in our testimony we deferred to the process which was already ongoing concerning these rules, with the exception of fugitive dust which was not an issue at the time. In other words, the DNR takes credit for resolution of "rule" issues which were not part of, and had nothing to do with this review!

6. Finally, in some cases, DNR staff have jumbled and ignored the facts on certain issues. This was especially clear in the issue of permits; MMA testimony indicated the specific problems the industrial community has encountered with the permitting procedure, particularly through the Air Quality Division. Statements made by DNR staff on December 17 indicate that they have misconstrued or ignored our concerns.

One positive idea which we strongly support is the suggestion made by Dr. Skoog to assign Executive Secretaries to the commissions who are not DNR division heads. This approach may be a means of ensuring neutrality on the issues, agendas, and recommendations which come before the various commissions.

In summary, at this point many MMA members can see little progress being made towards resolution of the rules review issues. We appreciate the hard work you and the committee have done throughout the last two years and we encourage you to ensure that the issues are not dropped and to strongly urge the agencies to work further with us so that this worthwhile project will have productive results. Your active participation in the rules review has been invaluable, and we look forward to your continuing help to ensure future follow-up and success.

Sincerely,

Deborah K. Hoover

Deborah K. Hoover
Director of Regulatory Affairs

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