

Department of Finance and Administration

Legislative Impact Statement

Bill: SJR7

As Engrossed: 3/6/2013

Bill Subtitle: AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE REVIEW AND APPROVAL OF ADMINISTRATIVE RULES BY A LEGISLATIVE COMMITTEE.

Basic Change :

Sen. Dismang

Rep. Lea

This resolution proposes a constitutional amendment to allow the General Assembly to adopt laws requiring legislative review and approval of rules promulgated by a state agency before those rules become effective.

Revenue Impact :

None

Taxpayer Impact :

None

Resources Required :

None

Time Required :

None

Procedural Changes :

None

Other Comments :

Many rules are adopted to administer complicated legal or technical issues. Approval by the General Assembly will make that process more difficult and time consuming as legislators with little or no background in the subject area educate themselves to the point where they can make an informed decision.

Legal Analysis :

The expansion of legislative powers at the expense of the executive would alter the balance of power between the branches of government. The bill alters the Separation of Powers doctrine as interpreted by the Arkansas Supreme Court with regard to rules of an executive branch agency. Under the classic division of the powers, the legislature makes the laws and appropriates state revenues, the executive administers the laws and expends the appropriations, and the judiciary interprets the laws. See *Chaffin v. Arkansas Game & Fish Comm'n*, 297 Ark. 431, 757 S.W.2d 950 (1988).

Arkansas law currently requires all agencies to submit proposed rules or amendments to the rule as well as a fiscal impact statement to the General Assembly. The General Assembly already reviews the administrative rules and amendments to administrative rules under Ark. Code Ann. § 10-3-309 and may, through legislative action during a session of the General Assembly, supersede any rule promulgated.

The Resolution would reduce the responsibility of the General Assembly to legislate with adequate specificity for the executive branch to administer the laws. The General Assembly could block implementation of a law that lacked sufficient standards by refusing to accept any administrative rules

Department of Finance and Administration

Legislative Impact Statement

Bill: SJR7

As Engrossed: 3/6/2013

Bill Subtitle: AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE REVIEW AND APPROVAL OF ADMINISTRATIVE RULES BY A LEGISLATIVE COMMITTEE.

until based on interpretations of the intent that were not included in the original enactment. Additionally, by retaining absolute control over the rules process, a legislative minority could block the effective implementation of an Act passed by the General Assembly.

At the same time, the expansion of the authority of the General Assembly beyond the current review by the ALC Administrative Rules and Regulations subcommittee would prohibit the Executive branch from guaranteeing administration of valid laws upon the effective date. This Resolution could allow the General Assembly to attempt to make substantive "legislative" changes by means of the Administrative Rule approval process despite not being in a regular session, fiscal session, or under the call of the Governor for a special session.

Vesting authority in a subcommittee to achieve what previously required legislative action by the entire General Assembly diminishes the representative authority of the General Assembly removing the ability of elected officials not on the subcommittee from being able to vote on whether to approve or disprove the rules.

By limiting the administrative authority of the Executive Branch to promulgate rules to effectuate the laws passed by the General Assembly, the constitutional checks and limitations on legislative power would be diminished.