

EXECUTIVE ORDER
93-12

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JUL - 2 1993

WHEREAS:

Judith K. Dornier
SECRETARY OF STATE

1. In the regular session of the 1993 General Assembly, several bills were enacted into law that provide for review of proposed administrative rules by the Joint Committee on Administrative Rules and the General Assembly. These bills include Senate Bill 52, signed into law today, which revises and makes uniform the procedure for reviewing proposed administrative rules by the Joint Committee on Administrative Rules and the General Assembly.
2. These provisions were enacted in part because of the widespread belief that the present statutory grant of power to the Joint Committee on Administrative Rules to disapprove a proposed administrative rule is unconstitutional. See, Dean, "Legislative Veto of Administrative Rules in Missouri: A Constitutional Virus," 57 Missouri Law Rev. 1157 (1992).
3. Senate Bill 52 and the other recent laws limit the authority of the Joint Committee on Administrative Rules to the power to suspend temporarily a proposed rule pending ratification of the committee's disapproval by resolutions of the Senate and the House of Representatives. The committee's power is limited to suspending and recommending disapproval of administrative rules for only a limited number of reasons, including: (1) an absence of statutory authority for the proposed rules; (2) an emergency related to public health, safety or welfare; (3) the proposed rule is in conflict with state law; (4) a substantial change in circumstance since the enactment of the law on which the proposed rule is based.
4. The recent legislation does not spell out whether or not resolutions of the General Assembly disapproving proposed administrative rules need to be presented to the Governor for his signature. On two previous occasions, the General Assembly proposed constitutional amendments to the voters that would have allowed legislative veto of administrative rules upon the concurrence of both houses of the General Assembly without presentment to the Governor. These proposed constitutional changes were defeated by the voters in 1976 and 1982.
5. The current Missouri Constitution, Article 4, Section 8, provides: "Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on questions of adjournment, going into joint session, and of amending this constitution, shall be presented to the Governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill; provided, that no resolution shall have the effect to repeal, extend, or amend any law."
6. The recent legislative enactments, which provide for disapproval of proposed administrative rules, clearly require resolutions that must necessarily have the concurrence of both houses of the General Assembly. Accordingly, under Article 4, Section 8, such resolutions must be presented to the Governor for his signature or veto, in the manner prescribed for bills under the constitution. See, State ex rel. Jones v. Atterbury, 300 S.W.2d 806 (Mo. 1957).
7. It is the duty of the Executive Branch to interpret and apply statutes in a manner that is consistent with the constitution. To assure that this is done, and that provisions of law relating to administrative rules are given uniform application throughout the Executive Branch, it is appropriate for this Executive Order to prescribe the manner in which the Executive Branch is to apply the law.

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order that:

1. Each Executive Branch department, agency, commission, and board shall give force and effect to resolutions disapproving an administrative rule, or resolutions ratifying the action of the Joint Committee on Administrative Rules disapproving a proposed rule, only if the resolutions are signed by the Governor or approved by two-thirds of each house of the General Assembly after veto by the Governor, as provided in Article 3, Section 31 and 32, and Article 4, Section 8, of the Missouri Constitution.
2. No Executive Branch department, agency, commission, or board shall give any force or effect to an action by the Joint Committee on Administrative Rules suspending a proposed rule after the expiration of thirty legislative days from the date of the action of the Joint Committee on Administrative Rules suspending or disapproving a proposed rule, unless the committee's action has been ratified in the manner set forth in paragraph 1, immediately above.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 2nd day of July, 1993.



Mel Carnahan
GOVERNOR

ATTEST:

Judith K. Isgrig
SECRETARY OF STATE