

**Legislative Powers of Rules Review in the States
and Congressional Powers of Rules Review**

By Stacey M. Tharp
Research Assistant
Administrative Law Advisory Committee

TABLE OF CONTENTS

LEGISLATIVE POWERS OF RULES REVIEW IN THE STATES.....	4
INTRODUCTION	4
THE RULES REVIEW PROCESS BY STATE	4
ALABAMA	4
ALASKA	4
ARIZONA	4
ARKANSAS	5
CALIFORNIA	5
COLORADO	5
CONNECTICUT	5
DELAWARE	6
FLORIDA	6
GEORGIA	6
HAWAII	6
IDAHO	6
ILLINOIS	7
INDIANA	7
IOWA	7
KANSAS	7
KENTUCKY	7
LOUISIANA	8
MAINE	8
MARYLAND	8
MASSACHUSETTS	8
MICHIGAN	9
MINNESOTA	9
MISSISSIPPI	9
MISSOURI	9
MONTANA	10
NEBRASKA	10
NEVADA	11
NEW HAMPSHIRE	11
NEW JERSEY	11
NEW MEXICO	11
NEW YORK	11
NORTH CAROLINA	11
NORTH DAKOTA	12
OHIO	12
OKLAHOMA	12
OREGON	12
PENNSYLVANIA	12
RHODE ISLAND	13
SOUTH CAROLINA	13
SOUTH DAKOTA	13
TENNESSEE	13
TEXAS	13
UTAH	14
VERMONT	14
VIRGINIA	14
WASHINGTON	15
WEST VIRGINIA	15
WISCONSIN	15

<i>WYOMING</i>	15
THE ISSUE OF THE LEGISLATIVE VETO AND SEPARATION OF POWERS	16
SELECTED CASES DECLARING LEGISLATIVE VETO UNCONSTITUTIONAL	17
CASE DECLARING LEGISLATIVE VETO CONSTITUTIONAL.....	17
THE LAW IN VIRGINIA	17
RESPONSES BY STATE	18
BACKGROUND MATERIALS USED FOR GENERAL INFORMATION	22
CONGRESSIONAL POWERS OF RULES REVIEW	23
THE PROCESS	23
THE HISTORY OF ITS USE.....	23
SOURCES USED	25

Legislative Powers of Rules Review in the States

Introduction

While every state requires that rules be in a certain format in order to be published, each state deals with review of the content of rules in a slightly different manner. Some states allow each agency to control the entire process once the authority to promulgate has been given (Mississippi and New Mexico), while others feel this is a process that should be carefully watched (Minnesota and Pennsylvania). However different the processes of review are, the important thing to note is that most states do allow some of the power of review to rest in the hands of the legislature (40 out of 49 responding states). Of these 40 states, 35 allow for some form of legislative committee review of rules, and 33 explicitly allow the legislature to suspend adoption of a rule or bar a rule from being adopted. In theory, all state legislatures have the power to “veto” a rule by passing a bill that is approved by a majority vote in both houses of the legislature and signed by the Governor; however, some states have chosen to explicitly state that the legislature has such a power.

The Rules Review Process by State

ALABAMA

The Joint Committee on Administrative Regulation Review reviews each proposed rule. The Committee has the power to veto a rule, and this veto is only good until the next regular session of the state legislature. The legislature must approve the veto by a joint resolution, but this joint resolution is subject to the Governor’s veto. The Committee does not review existing rules.

ALASKA

The Joint Committee on Administrative Regulation Review reviews all proposed rules. The Committee holds oversight hearings and may recommend to the entire legislature that a bill be passed to bar adoption of a rule. This bill would be subject to the Governor’s veto. In the past, the Committee could annul a rule, but that was ruled unconstitutional in 1980. There was an unsuccessful attempt to pass a constitutional amendment that would allow the legislature as a whole to annul rules by resolution. The Committee does not review existing rules. The legislature maintains the power to amend the authorizing statute for each agency.

The Lt. Governor can return rules that do not faithfully execute the law or respond to the comments by the legislative committee. No rule is effective until the Attorney General signs off on the legislative review. The Attorney General returns about 25 percent of rules.

ARIZONA

The Arizona Legislative Rules Committee was created by the leaders of the House and Senate. It has no statutory authority to review rules, and in reality, it does not

play a role in the rules review process at all. The Committee merely gives the appearance of legislative oversight.

The Attorney General reviews emergency rules and rules that are promulgated by all “special” agencies, or agencies with elected leaders. The Attorney General can return rules to the agency if they do not meet statutory criteria, but there is no general veto power.

The Governor’s Regulatory Review Council was created by the legislature, and the members are appointed by the Governor. The Council oversees rulemaking by all agencies not under the review of the Attorney General. Each agency subject to this review must review its own rules and submit a report concerning the findings of that self-review to the Council every five years.

ARKANSAS

Both proposed rules and possible amendments to existing rules must be filed with the Bureau of Legislative Research of the Legislative Council. Whenever the Council thinks that a rule is contrary to legislative intent or is not within an agency’s statutory authority, the Council will inform the General Assembly. The Council may also hold hearings to listen to testimony on a rule, and the Council may recommend that the General Assembly pass a statute to supersede the rule. Legislative committees may take the same action as the Council if they so choose. If the legislature chooses to pass a bill to supersede the rule, it must be signed by the Governor.

CALIFORNIA

The Office of Administrative Law, which is an independent review agency, reviews proposed rules. The Office has the power to bar adoption of rules, but these decisions can be appealed to the Governor.

COLORADO

There is no review of proposed rules. After rules become effective, the Attorney General issues an opinion regarding the rule, and then the Office of Legislative Legal Services reviews the rule to ensure that the rule is within the scope of the agency’s authority. Rules that the Office flags for further review are scheduled for a hearing before the legislature’s Joint Committee on Legal Services.

All rules are subject to automatic expiration unless the legislature passes a bill extending the timeframe. Each year a rule review bill is passed dealing with newly promulgated rules, and this bill, like all others, is subject to the Governor’s veto. Rules that the Committee decides are not within the agency’s power to promulgate will be included in a section of the bill that sets apart rules that will be allowed to automatically expire.

CONNECTICUT

The Attorney General reviews all proposed rules for legality. Then, the Regulation Review Committee reviews all rules, including emergency rules. The Committee votes on each rule and can choose to bar adoption of a rule, approve a rule, or make technical changes to a rule. Only a vote of the legislature as a whole can overturn the decision of the Committee. The Committee is a legislative entity comprised of 14

members (six from the Senate and eight from the House), and there are an equal number of members from each party.

Every 10 years, there is an agency-level search for obsolete rules. The state's Governor has an unofficial role in the review process.

DELAWARE

The legislature's Sunset Committee provides the only legislative review of rules. The Committee only reviews existing rules, and this is done by reviewing rules for about five or six agencies each year on a rotating basis. This review is limited to ensuring that the agency has not exceeded its statutory authority. All other review is done by the judiciary.

FLORIDA

The legislature's Joint Administrative Procedures Committee reviews all proposed and existing rules. The Committee can recommend that the legislature pass a bill to suspend or repeal a rule, but the Committee cannot take action to repeal a rule on its own. The legislature can only veto a rule by passing a bill subject to the Governor's veto. The Division of Administrative Hearings can invalidate both proposed and existing rules.

If the agency fails to respond to comments received from the Committee, the Department of State will not accept the rule for adoption. Also, there is now a requirement that all rules must be firmly grounded in an agency's statutory authority.

GEORGIA

All proposed rules are reviewed by legislative committees. The presiding officers of the House and the Senate assign each proposed rule to the appropriate committee based on subject matter. If the committee decides to oppose the rule, a resolution to override the rule will be placed on the legislature's docket. If the resolution passes by two-thirds in each house, the rule will be void. If the resolution passes by less than two-thirds in each house of the legislature, the rule will be forwarded to the Governor for his approval or veto.

HAWAII

Only the Governor has the authority to review rules, and he only reviews proposed rules. He has the authority to veto a rule.

IDAHO

The Legislative Services Office reviews all proposed rules, and a summary of the findings is sent to the appropriate legislative committee. The committee may hold a hearing on each rule if it chooses to do so, and it may submit comments to the agency. The committee cannot bar adoption of a rule.

According to state law, all rules expire automatically unless they are extended by statute. The legislature may pass a concurrent resolution to reject or amend rules that it thinks do not carry out the intent of the legislature.

ILLINOIS

The Joint Committee on Administrative Rules reviews both proposed and existing rules. The Committee can suspend a rule for a number of days. In order for the suspension to be permanent, both houses of the legislature must pass a joint resolution.

INDIANA

The legislature's oversight power is vested in the Administrative Rules Oversight Committee. It has interpreted its power of review only to extend to existing rules. The Committee looks at each rule and advises the legislature of any actions to take. The legislature may only veto a rule if a bill is passed under normal conditions.

Both the Attorney General and the Governor review proposed rules, and they both have the power to veto rules. The Attorney General can only veto rules if they are in an improper form or if they do not conform to existing law. The Governor can veto rules for any reason.

Each agency is required to re-promulgate its rules every seven years.

IOWA

The legislature's Administrative Rules Review Committee meets monthly to review all proposed rules. The Governor's Administrative Rules Coordinator sits on the committee as a non-voting member, and all rules must be filed with him. The Committee may object to a rule if it finds the rule to be unlawful. This objection only becomes important if the rule is challenged in court. The Committee can delay the effective date of a rule in order to allow for additional review by the legislature as a whole, and the legislature may rescind a rule by a joint action of the two houses.

The Governor may also object to a rule on the same basis as the Committee. He can also rescind a rule at any time during the first 70 days after it takes effect for any reason.

KANSAS

The Joint Committee on Administrative Rules and Regulations reviews all proposed rules, and it may choose to review existing rules. Any comments made by the Committee concerning a proposed rule are made part of the public record that is available at the hearing on the rule. The Committee may recommend statutory changes to overcome any problems it has with the final version of the rule, but this power has never been utilized because the agency always heeds the Committee's comments.

The Attorney General reviews all rules to ensure that the agency has the statutory authority to promulgate the rule.

KENTUCKY

All proposed rules are sent to the Legislative Research Commission, which is composed of General Assembly support staff. There are two legislative committees that have the power to review rules. The Administrative Regulation Review Subcommittee specializes in reviewing rules, and it holds hearings on each rule it reviews. The findings of the hearing are returned in a report to the Commission, and then the Commission assigns the rule to the second committee for review. The second committee is one that

specializes in the appropriate subject areas. This committee can hold hearings and render findings in the same way as the Subcommittee.

Either of the above mentioned committees can find that a rule is deficient. If a rule is found to be deficient, it will automatically expire at the end of the next session of the General Assembly unless it is enacted as a statute. The General Assembly may also pass a bill that addresses the same subject as a rule but is substantially different in effect, which makes the rule void. Currently, there is a case pending over whether this process violates the separation of powers.

LOUISIANA

The legislative committee that has the power to review each rule is determined by the subject area of the committee (i.e., the Natural Resources committee would review rules in that subject area). The Finance and Appropriations committees also review each rule. The committees may choose whether to meet to discuss submitted proposed rules. The committees may reject rules, but the Governor can override that decision. Therefore, the legislature passed a law that states that the legislature can suspend, amend, or repeal rules without that decision being subject to the Governor's veto. If there is no action on a rule by the legislature within 30 days of the agency submitting the rule to the committees, the agency may continue the process of adoption without waiting for the review.

The Governor may choose to veto a rule even if the committees approve it. This is done by executive order and must be done within the first 30 days after the rule becomes effective.

MAINE

The Attorney General must review all rules to ensure that they conform with the law.

Only major substantive rules are reviewed by the legislature, and whether a rule is considered substantive is determined by the agency's enabling statute. The rule goes to a committee, and the committee makes recommendations to the entire legislature. The legislature has the power to amend, approve, or disapprove a rule. This must be done by passing a bill, which is subject to the Governor's veto.

MARYLAND

The Attorney General and the Joint Committee on Administrative, Executive, and Legislative Review review all rules after promulgation. If the Committee decides to oppose a rule, the rule cannot take effect without approval of the Governor.

There is a Governor's task force for the review of existing rules that was created by Senate Bill 383, and an eight-year review process by agencies was established under House Bill 671. Under this, each agency must review its rules every eight years and submit work plans concerning all existing rules (i.e., to keep the rules, to rescind the rules, etc.).

MASSACHUSETTS

The current review process was established in 1996 by executive order. Each agency sends its rules to the appropriate Secretary for review. Then, all rules must go to the Office of Regulatory Review, which is part of the Governor's office, for review and

approval. The rules are reviewed to ensure that they are necessary, easy to understand, and cost effective. Also, each agency must have a plan for future action on its rules, so obsolete rules will not linger on the books. The Office can reject a rule or suggest amendments, but there is a 10-day time limit for the Office to take action.

The Legislature must be informed of all newly promulgated rules, but they do not actually review the rules.

MICHIGAN

The Joint Committee on Administrative Rules reviews all proposed rules. The Committee may object to a rule when a majority of the Committee members agree to do so. In order to object to a rule, the Committee must find that the rule meets one of seven tests set out in the state code. If the Committee objects to a rule, a bill must immediately be introduced to rescind the rule, repeal the statutory authority under which the rule was promulgated, or stay the effective date of the rule. This bill is subject to the Governor's veto. If the Committee does not act within 21 days of receiving the rule from the agency, the rule automatically becomes effective.

The Governor has control over the rules making process from beginning to end. He may stop the process at any time, and all rules are subject to his decisions.

MINNESOTA

The Office of Administrative Hearings reviews all rules except the expedited emergency rules of the Department of Natural Resources, which are reviewed by the Attorney General. The Attorney General may bar adoption of these emergency rules if they are found not to conform with certain legal standards. For all other rules, the Office of Administrative Hearings holds a hearing, which is lead by an administrative law judge (ALJ). The ALJ hears all evidence presented and then files a written report. The ALJ may approve, approve with amendments, or disapprove a rule. He must disapprove a rule if it falls into one of the categories listed in the statute.

Rules are assigned to standing committees for review based on the subject area covered by the rule and the committee. The standing committees of the legislature may delay adoption of a rule by way of a majority vote as long as the vote is taken before the notice of rule adoption is published in the State Register. If a committee does so, the agency may not adopt the rule until the end of that legislative session.

The Governor may veto a rule if he submits the notice of veto to the State Register within 14 days of receiving a copy of the rule.

Agencies are required to file an annual report of obsolete rules, and the report must include a timetable for repealing the rules.

MISSISSIPPI

There is no review of rules for content by anyone other than the agency that promulgated the rules.

MISSOURI

The Joint Committee on Administrative Rules receives a copy of every proposed rule. The Committee may hold hearings on any rule or any part of a rule, and it may submit comments and recommendations to the Administrative Rules Division for

publishing. The Committee may also send its comments to the Appropriations Committees of the House and Senate.

If the Committee disapproves a rule or a portion of a rule, the rule cannot go into effect for 30 days. During that time period, the House and Senate can pass a joint resolution permanently disapproving a rule. This resolution must be signed by the Governor. If this is done, the rule cannot go into effect at all. The legislature as a whole may also choose to pass a bill that overrides the rule.

Not all agencies are subject to this process. The Committee does not have the authority to disapprove emergency rules; however, it can still make comments about the rule. The Secretary of State reviews emergency rules.

The Secretary of State ensures that all rules were promulgated according to the state's rulemaking requirements. The Attorney General and the Governor do not have any powers of review.

MONTANA

Each of the seven interim legislative Committees has the power to review rules that fall within its subject area jurisdiction. The Committees may require an agency to hold hearings on a rule, and the Committees may submit comments on proposed rules. If the Committee objects to a rule, the agency must respond in writing, and if the agency does not amend the rule to satisfy the Committee's objections, the agency will bear the burden of proving the rule falls within its authority. The Committee may also petition an agency to amend or repeal rules, as well as delay the effective date of a rule.

The Committees may also make recommendations to the Legislature. For instance, they can recommend that the statute granting rulemaking authority to the agency be amended in order to ensure that the agency follows legislative intent in its future rulemaking. The Committee may also draft such legislation to be presented to the Legislature.

The Governor has the power to review each rule for compliance with gubernatorial policy if he chooses. He may choose to veto any rule.

NEBRASKA

A copy of each rule promulgated is filed with the Executive Board of the Legislature, and it forwards the rule to the appropriate standing committee based on subject matter. The committee reviews the rule, and members of the legislature may appear at the hearings for proposed rules to make comments. The legislature does not have the power to bar adoption of rules or to veto rules.

The Attorney General and the Governor must approve all rules before they can be filed and become law. The Attorney General ensures that all rules are constitutional and comply with the agency's statutory authority to promulgate. The Governor is assisted in his review of rule content by the Governor's Policy Research Office, which receives information on each rule both prior to the hearing on the rule and immediately prior to the rule being published. If the Governor does not approve a rule, it does not become effective.

The Secretary of State reviews rules merely for format.

NEVADA

A copy of all proposed rules goes to the Legislative Commission. A legislative committee may be designated to review rules that are promulgated between legislative sessions. The Committee determines whether the rule falls within the agency's statutory authority and whether it meets legislative intent, and the Committee may suspend the rule until the next legislative session. The legislature as a whole may bar adoption of a rule permanently.

NEW HAMPSHIRE

The Joint Legislative Committee on Administrative Rules is the only governmental entity that reviews proposed rules. The Committee may approve, conditionally approve, or preliminarily object to a rule. If the Committee conditionally approves a rule, the agency must make certain changes to the rule before it will be approved. If the Committee objects, the agency may make changes to the rule and resubmit it. If the Committee then rejects the rule again in a final objection, the rule is valid until a court finds the rule invalid. The Committee may temporarily bar adoption of a rule by voting to sponsor a joint resolution against the rule, but the resolution is subject to the Governor's veto. Only the portions of the rule that would be affected by the resolution cannot be adopted. The only proposed rules that require approval of the Committee are interim rules.

NEW JERSEY

The legislature has the power to veto rules under a 1992 amendment to the New Jersey Constitution if the rule is found to be inconsistent with legislative intent. The following steps must be taken to veto a rule: 1) both houses of the legislature must pass a concurrent resolution finding the rule to be inconsistent with legislative intent; 2) the agency fails to amend or withdraw the rule, and a public hearing is held; and 3) both houses of the legislature pass a concurrent resolution barring adoption of the rule.

The Governor does not have the power to veto rules, but he does have 30 days to respond to a disapproval of a rule by the legislature. The Attorney General does not have any direct oversight of rulemaking.

NEW MEXICO

There is no review for rule content.

NEW YORK

The Committee on Administrative Regulations Review reviews all proposed rules. The legislature does not have the power to bar adoption of a rule. The Governor's Office of Regulatory Reform has veto power over all rules except emergency rules.

NORTH CAROLINA

The Rules Review Commission has to approve a rule for it to become effective. The legislative committee with the power to review rules must be given sufficient time to review each rule before it can become effective, but no formal approval is required. The rules cannot become effective until at least the next legislative session. The legislature can bar adoption of a rule by passing a bill that is subject to the Governor's veto.

NORTH DAKOTA

The Administrative Rules Committee reviews all rules after they become effective, and the Committee can veto rules for specific reasons set out by statute. The Governor must approve emergency rules before they can become effective. The Attorney General looks at all promulgated rules, and he can bar adoption of any rule that is illegal. The Attorney General can void a rule even after it has been made effective.

OHIO

The Joint Committee on Agency Rule Review reviews all proposed rules. By majority vote, the Committee can invalidate all or a portion of a rule and then amend the rule. The Committee looks at each rule for four reasons: 1) to see if it falls within the agency's statutory authority; 2) to see if it violates legislative intent; 3) to see if it is in conflict with another rule or law; and 4) to see if the rule is incomplete. The Committee does not have the authority to bar adoption of a rule.

All existing rules are reviewed by the Committee every five years in order to determine if there are obsolete rules, and each agency may review its own rules for obsolete rules as it sees fit.

OKLAHOMA

There is no review of rules until after they are adopted. The agency is required to submit a copy of all adopted rules to both houses of the legislature as well as the Governor. The Administrative Rule Review Committee (ARRC) is the standing committee for rules review in the House, but the Senate does not have a standing committee for rules review. The ARRC can make recommendations concerning rules to both the House and the agency. The legislature as a whole can disapprove a rule by either concurrent resolution or joint resolution.

The Governor has a staff person who is specifically assigned to rules review. He reviews all rules for content as well as legality. The Governor must specifically give a rule final approval within 45 days of receiving it, or it is considered to be disapproved.

OREGON

Agencies are required to submit all proposed rules to the legislature. The Committee that has subject matter jurisdiction over the rule has the power to review the rule and may hold hearings concerning it. The legislature also has the authority to review existing rules. No entity has the power to veto rules.

PENNSYLVANIA

Proposed rules are reviewed by the Attorney General, the legislature, and the Independent Regulatory Review Commission (IRRC). The Attorney General reviews rules merely to ensure legality. If the Attorney General does not take any action within 30 days of receiving the rule, it is deemed to be approved.

Each house of the legislature has committees that review proposed rules. The committees may submit comments concerning the rule to the agency. The appropriate committees may approve or disapprove the rule. The committees may submit concurrent resolutions to the legislature as a whole for the purpose of disapproving the rule. This resolution is subject to the Governor's veto.

IRRC reviews all rules except the rules promulgated by the Game Commission and the Fish and Boat Commission. The scope of the review covers whether the rule falls within the agency's rulemaking authority and whether the rule is consistent with legislative intent. IRRC sends comments on each rule to the agency, and IRRC has the authority to disapprove a rule.

The Governor recently passed a management directive instructing state agencies to review their existing rules in an effort to get rid of obsolete rules. The Governor's General Counsel also reviews all rules to ensure that they meet policy and legal requirements.

RHODE ISLAND

NO RESPONSE

SOUTH CAROLINA

Proposed rules must be submitted to the General Assembly for approval. Each rule is reviewed by the appropriate committee based on subject matter. The General Assembly can either approve or disapprove a rule by joint resolution within 120 days of receiving it. The joint resolution does not take effect until approved by the Governor. If no action is taken within the 120 days, the rule is automatically approved.

SOUTH DAKOTA

The Legislative Research Council does a preliminary review of all proposed rules for style and form and to ensure that the agency's statutory authority allows it to make such a rule. The Interim Rules Review Committee also reviews proposed rules. The Committee's power to bar adoption of a rule is limited to cases where the rule is outside of the scope of the agency's authority or when the rule is determined to be unconstitutional. To bar adoption of a rule, the Committee needs a minimum of a three-fourths majority vote.

TENNESSEE

The House and Senate Government Operations Committees review rules. The Committees may petition an agency to amend, withdraw, or repeal a rule. The Committees may also delay the effective date of a rule for up to 60 days, but they do not have the power to veto a rule. By majority vote, any standing committee of the General Assembly can require a promulgating agency to hold hearings on a particular proposed rule.

The Attorney General reviews all rules for legality, and he can reject rules that he determines to be illegal under current law or that fail to meet statutory criteria for adoption.

TEXAS

Legislative review of proposed rules is conducted by the standing committees of the legislature. The committees may send agencies statements supporting or opposing proposed rules. Agencies are limited in their ability to promulgate rules in that they must not overstep the bounds of their statutorily granted authority.

The Attorney General and the Governor do not play a formal role in the rules review process, but the Attorney General occasionally counsels agencies on actions taken during the rule-making process.

No entity has the power to veto a rule.

UTAH

The legislature's Administrative Rules Review Committee reviews all rules. The Committee reviews each rule to determine 1) whether it is authorized by statute, 2) whether it complies with legislative intent, 3) whether the economic impact will be significant, and 4) whether the impact on affected persons will be too great. After making its findings, the Committee may make recommendations to the legislature as a whole concerning the rule (i.e., to pass legislation concerning the new rule).

Unless re-authorized by the legislature, all newly promulgated rules expire on May 1st. The Administrative Rules Review Committee prepares a piece of legislation every year to reauthorize a majority of the rules. Those which are not to be re-authorized are set out in a separate section denoting that they will be allowed to expire. The Governor may extend a rule beyond its expiration date despite the legislature's choice not to re-authorize the rule.

Each agency must review each of its own rules every five years. After the review, the agency must either file a five-year renewal of the rule or a repeal of the rule with the Division of Administrative Rules. If the agency does not take any action on a rule that is up for its five-year review, the rule is automatically repealed.

VERMONT

The Interagency Committee on Administrative Rules, an executive branch committee, reviews most proposed rules before they are filed. This Committee cannot object to any rules, but it must work with all agencies to maximize public input received concerning proposed rules.

All proposed rules must be reviewed by the Legislative Committee on Administrative Rules. The Committee may object to a rule on the grounds that it does not fall within the agency's statutory authority, is contrary to legislative intent, or is arbitrary. If the Committee does so and the agency refuses to amend the rule, then the agency has the burden of proving the validity of the rule if it is ever challenged in court.

No entity in the state has the power to bar adoption of a rule.

VIRGINIA

A legislative committee can suspend the adoption of a rule for a period of time with the Governor's approval. If the legislature of Virginia passes a bill to override the rule and it is signed by the Governor, the agency rule that was suspended by the legislative committee will not go into effect.

The Attorney General only has the authority to review rules for statutory authority. The exact process the Attorney General follows in reviewing existing rules is governed by executive order, so it may change slightly with each administration.

The Governor reviews rules to ensure that they are necessary, written clearly and easy to understand. The Governor may require agencies to review their existing regulations, but this is not automatic. The exact process the Governor follows in

reviewing existing rules is governed by executive order, so it may change slightly with each administration. He may suspend the effective date of a rule temporarily.

WASHINGTON

The Joint Administrative Rules Review Committee (JARRC) is the legislative committee that reviews both proposed and existing rules, but JARRC only reviews rules that raise a question of whether they follow legislative intent. Standing legislative committees review rules if JARRC feels that the authorizing statute was controversial in the particular subject area. If JARRC objects to a rule, the promulgating agency must hold a hearing on the rule. If the agency does not amend the rule in a way JARRC finds to be appropriate, JARRC files a formal objection to the rule. By a majority vote, JARRC may recommend suspension of a rule. This suspension must be approved or disapproved by the Governor. If it is approved, the rule will be suspended until 90 days after the next legislative session. The public may appeal the decision of the Committee concerning a rule to the agency and then to the Governor, and the Governor has the power to veto a rule.

WEST VIRGINIA

The Legislative Rule-Making Review Committee reviews rules and then makes recommendations concerning each rule to the legislature as a whole. The legislature must pass a bill in order to bar adoption of a rule after the Supreme Court's decision, which found that there was a separation of powers issue if this was done in any other manner.

Emergency rules are not reviewed by the Committee. They are reviewed by the Attorney General and the Secretary of State for form and legality.

WISCONSIN

All proposed rules must be filed with the Legislative Council Staff for review on the basis of 1) statutory authority; 2) procedure, form, and style; 3) avoiding duplication of rules; 4) potential conflicts with federal rules; and 5) ensuring all statutory requirements have been met. Once the Legislative Council Staff makes its findings, the rules are sent to the legislature.

The leaders of each house of the legislature forward proposed rules to the appropriate committee for review. The committees may hold private meetings and public hearings on each rule. The committees may object to a rule for several reasons, including that it is contrary to legislative intent. Once an objection has been made, the rule is sent to the Joint Committee for Review of Administrative Rules for further review. The Joint Committee may disagree or agree with the other Committee's objection to the rule. If the Joint Committee agrees, it will introduce a bill to prevent promulgation of the rule. If the bill is passed, the rule may not be promulgated.

WYOMING

The Legislative Services Office (LSO) reviews rules. After reviewing rules, LSO makes recommendations to the Management Council of the Legislature. Any rules that are found to be objectionable are forwarded to the Governor with a recommendation that he request the agency rescind the rule. The legislature can pass a legislative order (much

like a bill) to prohibit the implementation of a rule, and the Governor can veto a rule in whole or in part.

The Issue of the Legislative Veto and Separation of Powers

In theory, it seems that power given to a state agency by its legislature should still be subject to review by the legislature because the agency is undertaking a legislative function. Therefore, it would seem that the legislature can strike down any rule made by the agency if the legislature disapproves the measure. However, that is not necessarily the case. The majority of states that have addressed this issue, as well as the Supreme Court of the United States, have come to the conclusion that the legislature cannot veto a rule promulgated by a state agency without violating the doctrine of separation of powers.

The line of thought used by most state courts in deciding if legislative veto of agency rules was a violation of separation of powers is simple. Once the power to promulgate rules has been statutorily given to the agencies, it is an executive power to regulate and ensure that laws are properly enforced. Therefore, the legislature no longer has any power over the actions of the agency because the agency is performing an executive function. Therefore, vetoing an agency rule is not merely choosing not to pass a bill, it is vetoing action by the executive branch, which the legislature clearly does not have the authority to do under the separation of powers doctrine. In order to overturn an executive action, the legislature must pass a bill and have it signed by the Governor; therefore, that should also be the only way the legislature can overturn a rule.

Idaho is the only state that has addressed this issue and come to the opposite conclusion. The court in this case stated that, because the agency did not have the power to make laws, only to promulgate rules that are subject to law, the legislature had not delegated any of its authority to the agency. The court averred that rules are not equal in status to laws and therefore may be revoked in a different way. Also, probably the most important reason the court found that there is no separation of powers problem is that the legislature passed a bill authorizing a legislative veto of agency rules, and the Governor signed it into law. Therefore, the legislature was acting under the authority of a law that was enacted according to the procedure required under the state constitution.

Two states (Alaska and New Jersey) have taken a different approach to the problem. These states decided to overcome the separation of powers issue by amending the state constitution. Alaska has attempted to amend its constitution to allow legislative vetoes of agency rules, but the amendment has never passed. New Jersey was successful in amending its constitution, and in 1992, the state passed an amendment that allows the legislature to veto a rule that is found to be inconsistent with legislative intent. According to the amendment, the following steps must be taken to veto a rule: 1) both houses of the legislature must pass a concurrent resolution finding the rule to be inconsistent with legislative intent; 2) the agency fails to amend or withdraw the rule, and a public hearing is held; and 3) both houses of the legislature pass a concurrent resolution barring adoption of the rule.

The Supreme Court ruled on federal legislative vetoes in *INS v. Chadha* in 1983. In this case, Congress acted under a provision in the law that allowed one House to pass a resolution overriding a suspension of deportation granted by an Immigration Judge of the Immigration and Naturalization Service. The Court held that the legislature cannot veto

an action taken by an arm of the executive branch without passing a bill that is signed by the President because doing so violates the separation of powers set out in the Constitution of the United States.

If legislators wish to pursue legislative veto of regulations, it is important to evaluate the case law that has emerged from other states. Depending on the design of the veto authority, a veto could be challenged, and existing case law suggests that such a challenge would succeed. The following cases represent an incomplete list of cases addressing this issue.

Selected Cases Declaring Legislative Veto Unconstitutional

INS v. Chadha, 462 U.S. 919 (1983).

State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Ala. 1980).

State v. Manchin, 279 S.E.2d 622 (W. Va. 1981).

The General Assembly of the State of New Jersey v. Byrne, 448 A.2d 438 (N.J. 1982).

Stephan v. Kansas House of Representatives, 687 P.2d 622 (Kan. 1984).

The Legislative Research Commission v. Brown, 664 S.W.2d 907 (Ky. 1984).

Missouri Coalition for the Environment v. Joint Committee on Administrative Rules, 948 S.W.2d 125 (Mo. 1997).

Case Declaring Legislative Veto Constitutional

Mead v. Arnell, 791 P.2d 410 (Idaho 1990).

The Law in Virginia

In 1982, the Attorney General issued an opinion on § 9-6.14:9 of the Code of Virginia. That section allowed the General Assembly to “defer, modify, or annul a State agency’s regulations that are properly promulgated pursuant to a valid grant of authority.” It allowed for the General Assembly to void all of or a portion of an agency regulation by passing a joint resolution. The opinion concluded that § 9-6.14:9 would be found unconstitutional if challenged in court because it violated the separation of powers established in both Article III § 1 and Article IV § 11 of the Constitution of Virginia.

§ 9-6.14:9 of the Code of Virginia has recently been recodified as § 2.2-4014, and it has been amended since the issuance of the 1982 Attorney General’s opinion. The section now allows for the General Assembly to “suspend the effective date of any portion or all of a final regulation with the Governor’s concurrence.” In order to completely bar adoption of the regulation, the General Assembly must now pass a bill at the next regular legislative session. This version of the statute does not allow for a legislative veto, and there has not been an opinion from the Attorney General stating it is violation of the separation of powers. To date, there are no court decisions in the Commonwealth of Virginia that speak to this separation of powers issue.

Responses by State

Alabama

- Jerry Bassett by phone 6/19/01 and by email 7/27/01

Alaska

- Deborah Behr by phone 6/12/01

Arizona

- Jeanne Hann by email 6/19/01, 6/20/01, and 7/31/01 and by phone 8/1/01

Arkansas

- Larry Holifield by email 5/29/01
- Donna Davis by email 6/20/01 and by phone 6/25/01
- Aaron Black by email 6/26/01

California

- Herb Boltz by email 5/30/01 and by phone 6/4/01

Colorado

- Chuck Brackney by email 6/20/01
- Bernetta Collins by email 6/21/01
- Renny Fagan by email 6/26/01

Connecticut

- Pamela Booth by phone 6/5/01
- Richard Kehoe by email 6/7/01

Delaware

- Walter Feindt by letter 6/4/01
- Malcolm Cobin by letter 6/11/01
- Maryanne McGonegal by phone 6/13/01

Florida

- Scott Boyd by phone and email 6/7/01
- Carroll Webb by letter 6/8/01

Georgia

- Sewell Brumby by email 6/4/01 and 8/1/01

Hawaii

- Maurice Kato by email 6/27/01

Idaho

- Caralee Lambert by letter 6/1/01 and by email 6/8/01
- Kay Manweiler by email 6/13/01

Illinois

- Stephen Rotello by email 6/7/01

Indiana

- George Angelone by email 6/4/01

Iowa

- Joe Royce by email 6/20/01

Kansas

- Bill Wolff by 6/5/01
- Julene Miller by letter 6/6/01

Kentucky

- John Schaaf by email 7/6/01 and 8/2/01

Louisiana

- Jerry Guillot by phone 6/4/01
- Mary Quaid by email 6/5/01 and 6/22/01
- Patrick Martin by letter 6/13/01

Maine

- Jeff Pidot by phone 6/6/01
- David Elliott by phone 6/12/01

Maryland

- Robert Zarnoch by letter 6/25/01
- Uma (last name unknown) by phone 8/8/01

Massachusetts

- John Robertson by email 7/17/01
- Earl (last name unknown) by phone 8/7/01
- Jack Gracey by phone 8/28/01

Michigan

- Alyssa Sikkenga by phone and email 6/6/01
- Dennis Smith by letter 6/12/01 and by email 8/6/01 and 8/20/01

Minnesota

- Paul Marinac by email 6/6/01

Mississippi

- Jerry Barham by letter 7/10/01

Missouri

- Lynne Angel by email and phone 7/27/01
- Joan Gummels by email 7/27/01

Montana

- John MacMaster by email 6/5/01

Nebraska

- Steve Grasz by letter 6/7/01
- Pat Shaffer by letter 6/7/01
- Greg Lemon by email 6/13/01

Nevada

- Lorne Malkevich by phone 6/12/01

New Hampshire

- Scott Eaton by email 6/7/01

New Jersey

- Carrie Anne Calvo-Hahn by letter 6/25/01
- David L. Sallach by letter 7/23/01 and phone 8/21/01

New Mexico

- John Martinez by phone 6/18/01

New York

- Tom Cogden by phone 6/7/01
- Saleem Cheeks by email 6/8/01

North Carolina

- Joe Deluca by email 8/9/01

North Dakota

- John Walstad by email 6/6/01 and 8/30/01
- Jim Flemming by phone 6/11/01

Ohio

- William Hills by phone 6/6/01

Oklahoma

- Ellen Phillips by email 6/21/01
- Selden Jones by email 8/23/01

Oregon

- Gregory Chaimov by letter 6/20/01

Pennsylvania

- Bob Nyce by email 5/30/01
- David DeVries by letter 6/11/01

Rhode Island

NO RESPONSE

South Carolina

- Lynn Bartlett by email 6/7/01 and 8/21/01

South Dakota

- Doug Decker by phone 6/7/01 and by email 9/5/01

Tennessee

- Erika Lewis by letter 8/29/01 and by fax 9/6/01

Texas

- Don Walker by email 6/21/01, 6/22/01, and 9/4/01

Utah

- Art Hunsaker by email 6/8/01

Vermont

- Brian Leven by email 6/12/01

Washington

- Fred Hellberg by phone 6/12/01

West Virginia

- Debrah Graham by phone 6/11/01

Wisconsin

- Alan Lee by phone 6/18/01 and by fax 6/27/01

Wyoming

- Dave Gruver by email 6/18/01 and 8/23/01

Background Materials Used for General Information

- “Legislative Review of Administrative Rules and Regulations,” August 1990, distributed by the National Conference of State Legislatures
- “1996-1997 Administrative Rules Review Directory and Survey,” distributed by the National Association on Administrative Rules Review
- The official website of each state

Congressional Powers of Rules Review

The Process¹

Congress gets its power to review agency regulations from the Congressional Review Act, which was passed in 1996. This act requires federal agencies to submit a report on each final regulation to Congress for review. The report must include a copy of the rule itself, a determination of whether the rule is a major rule, and the proposed effective date of the rule. Each report is then given to the standing committees in each House of Congress with subject matter jurisdiction over the enabling statute.

If Congress wishes to disapprove a regulation, a joint resolution must be submitted to the committee with subject matter jurisdiction over the regulation in each House of Congress. The Senate may bypass the committee procedure if the appropriate committee has not acted on the joint resolution within 20 days of receiving it and 30 members of the Senate sign a petition to remove it from committee.

Once the committees have approved the joint resolution, it is put on the calendar for floor debate and a vote is taken. If one House of Congress receives a joint resolution from the other House before it has voted on its own joint resolution, that House will proceed as if it never introduced its own version of the joint resolution.

If the joint resolution is approved by both Houses of Congress, it is presented to the President. The President must sign the resolution for the regulation to be officially disapproved. If the resolution is enacted by the President, the agency cannot reissue the regulation in a substantially similar form. The President does have the power to veto this resolution, and it is important to note that he can enact emergency regulations by Executive Order, over the objections of Congress.

The History of Its Use²

Congress has not really exercised its power of disapproval during the past four years. Between April 1, 1996, and March 13, 2001, a total of 21,653 regulations were

¹ The information in this section is compiled from both Congressional Review Act, 5 U.S.C. §§ 801-808 (2000) and information on the Congressional Review Act from <http://enzi.senate.gov/cra.htm>.

submitted to Congress for review, and only one of those regulations was disapproved. Below is a table from Regulation.org showing the breakdown of regulation submissions for each calendar year between 1996 and 2001.

Table 4.1 Issues 2000

21,653 Major and Minor Rules in the Past Five Fiscal Years

	Major	Minor	Total
FY1996*	35	2,024	2,059
FY1997	59	3,873	3,932
FY1998	70	4,672	4,742
FY1999	58	4,495	4,553
FY2000	65	4,528	4,593
FY2001**	48	1,718	1,766
Total	335	21,318	21,653

Note: * Figures are from April 1, 1996 to March 13, 2001.
 GAO did not keep records prior to April 1, 1996.
 Note:** First Quarter Only
 Source: U.S. General Accounting Office, *SBREFA Rules Report*.

The one regulation that Congress disapproved was the Department of Labor’s Ergonomics Rule. It was a midnight regulation passed by the Clinton Administration, and with the cooperation of the Republican President and Republican Congress, the Joint Resolution was passed to disapprove the rule.³

² The information in this section was compiled from Congress and Regulation, found at <http://www.regulation.org/congress.html>.

³ Information found in the “Ergonomic Rule Disapproval/Final Passage,” Senate Record Vote Analysis.

Sources Used

Congressional Review Act, 5 U.S.C. §§ 801-808 (2000).

Information on the Congressional Review Act from <http://enzi.senate.gov/cra.htm>

Congress and Regulation, found at <http://www.regulation.org/congress.html>

“Ergonomic Rule Disapproval/Final Passage,” Senate Record Vote Analysis.

Tables: State Governmental Entities with the Power to Review the Content of Rules

State Governmental Entities with the Power to Review the Content of Rules

By Stacey M. Tharp
Research Assistant
Administrative Law Advisory Committee

Key

- **The Model APA has been included at the top of all tables to allow the reader to compare each state’s review process to that of the APA. Virginia has also been included on each table for the same purpose.**
- **A note concerning proposed v. existing rules: Not all states review rules while they are in the “proposed” stage. Some states wait to review rules until the final version has been published and enacted. Therefore, existing rules can be newly promulgated rules or rules that have been in existence for many years, depending on the state.**
- **Rhode Island is highlighted with gray because they did not respond to the survey. Therefore, there was no data to include in the tables.**
- **The tables only cover the system of review of the content of rules, not their form. Two states, Mississippi and New Mexico, do not have a system for review of rule content. For this reason, there is no data included in the tables for these states. Therefore, all other states for which there is no data on a specific table do not have a system of review that fits into that table.**
- **Each table has footnotes, which can be found immediately following the table. The footnotes explain any limitations placed on the review powers of a certain entity as well as describing any unique grants of power.**

Structure of Review for Proposed Rules

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
Model APA*	x					
Alabama	x					
Alaska	x		x		Lt. Governor	
Arizona	x ¹					
Arkansas	x			Legislative Research		
California		Office of Admin Law				
Colorado						
Connecticut	x		x			
Delaware						
Florida	x					
Georgia	x					
Hawaii						x
Idaho	x			Leg. Services Office ²		
Illinois	x					
Indiana			x			x
Iowa	x				GARC ³	
Kansas	x		x ⁴			
Kentucky	x					
Louisiana	x					x
Maine	x ⁵		x ⁶			
Maryland						
Massachusetts					Secretary & Office of Regulatory Review	
Michigan	x					
Minnesota	x		x ⁷		Office of Admin Hearings	
Mississippi						
Missouri	x				Secretary of State ⁸	
Montana	x					x ⁹

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
Nebraska	x ¹⁰		x			x
Nevada	x					
New Hampshire	x					
New Jersey						
New Mexico						
New York	x	Gov's Office of Regulatory Rev.				
North Carolina					Rules Review Cmsn.	
North Dakota			x			x ¹¹
Ohio	x					
Oklahoma						
Oregon	x ¹²					
Pennsylvania	x	Indep. Regulatory Rev. Comm'n.	x		Gov's General Counsel	
Rhode Island						
South Carolina	x ¹³					
South Dakota	x			Leg. Research Council		
Tennessee	x		x			
Texas	x					
Utah	x					
Vermont	x				Interagency Committee	
Virginia			x ¹⁴			x ¹⁵
Washington	x					
West Virginia	x ¹⁶					
Wisconsin	x			Leg. Council Staff		
Wyoming				Leg. Services Office		

Structure of Review for Proposed Rules

Footnotes

- * The Model APA allows legislative committees to review proposed rules at will. They can hold committee hearings and send comments to the agency promulgating the rule.
- 1 *Arizona*: The Committee has no statutory authority to review rules, and in reality, it does not play a role in the rules review process at all. It exists merely to give an illusion of legislative oversight.
 - 2 *Idaho*: The Legislative Services Office reviews all rules and sends a summary of the findings to the appropriate legislative committee for further review.
 - 3 *Iowa*: The Governor's Administrative Rules Coordinator sits on the legislature's Administrative Rules Review Committee as a non-voting member. He works in the Governor's office as the advisor on administrative law and all rules must be filed with him.
 - 4 *Kansas*: The Attorney General can only review proposed rules to determine if they fall within the statutory authority of the agency.
 - 5 *Maine*: Legislative committees only review major substantive rules, which are defined by the enabling statute.
 - 6 *Maine*: The Attorney General can only review proposed rules to determine if they conform with existing law.
 - 7 *Minnesota*: The Attorney General only reviews expedited emergency rules from the Dept. of Natural Resources.
 - 8 *Missouri*: The Secretary of State reviews emergency rules, but he also ensures that all other rules were properly promulgated.
 - 9 *Montana*: The Governor does not have specific statutory authority to review rules; however, he sometimes chooses to review proposed rules to ensure that they comply with gubernatorial policy.

- 10 *Nebraska*: Statute only requires that the Executive Board of the Legislature be given a copy of all proposed rules and that committees be given an opportunity to comment.
- 11 *North Dakota*: The Governor must approve emergency rules before they become effective.
- 12 *Oregon*: Rules are reviewed by the legislative committee with jurisdiction over the subject matter of the rule.
- 13 *South Carolina*: Rules are reviewed by the legislative committee with jurisdiction over the subject matter of the rule.
- 14 *Virginia*: The Attorney General only has the authority to review rules for statutory authority.
- 15 *Virginia*: The Governor reviews rules to ensure that they are necessary, clearly written and easy to understand.
- 16 *West Virginia*: The Committee reviews all rules except emergency rules.

Structure of Review for Existing Rules

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
Model APA*	x				Agency	
Alabama						
Alaska						
Arizona			x ¹		Agency/Council ²	
Arkansas						
California						
Colorado	x ³			Office of Leg. Legal Services ⁴		
Connecticut					Agency ⁵	
Delaware	x ⁶					
Florida	x					
Georgia						
Hawaii						
Idaho						
Illinois	x					
Indiana	x ⁷					
Iowa						
Kansas	x					
Kentucky						
Louisiana	x					x
Maine						
Maryland	x		x		Gov's Task Force & Agency ⁸	
Massachusetts						
Michigan						
Minnesota					Agency ⁹	
Mississippi						
Missouri						
Montana						
Nebraska						
Nevada						

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
New Hampshire						
New Jersey						
New Mexico						
New York						
North Carolina						
North Dakota	x					
Ohio	x ¹⁰				Agency ¹¹	
Oklahoma	x					x
Oregon	x					
Pennsylvania					Agency ¹²	
Rhode Island						
South Carolina						
South Dakota						
Tennessee	x		x			
Texas						
Utah	x				Agency ¹³	
Vermont						
Virginia			x¹⁴		Agency¹⁵	x¹⁶
Washington	x					
West Virginia						
Wisconsin	x					
Wyoming						

Structure of Review for Existing Rules

Footnotes

- * Under the Model APA, each state agency is required to review all of its existing rules on a regular basis; the time frame is set by the state's individual APA.
- 1 *Arizona*: The Attorney General only reviews emergency rules and rules promulgated by those agencies known as special agencies. He only has the authority to review rules to ensure that they meet statutory criteria.
 - 2 *Arizona*: Agencies that are subject to Council oversight must review their rules every five years and make a report to the Council.
 - 3 *Colorado*: The legislative committee only has the authority to review rules that are referred to it by the Office of Legislative Legal Services.
 - 4 *Colorado*: The Office of Legislative Legal Services only has the authority to review rules to see if they fall within the scope of the agency's rulemaking authority.
 - 5 *Connecticut*: Each agency is required to review its own regulations every 10 years for obsolete rules.
 - 6 *Delaware*: The legislative committee only reviews rules from approximately six agencies per year on a rotating basis. The scope of review is limited to ensuring that the agencies have not exceed their authority. All other review is left to the judiciary.
 - 7 *Indiana*: The review of existing rules by this committee is merely advisory in nature.
 - 8 *Maryland*: Each agency must review its rules every eight years and submit work plans concerning all existing rules.
 - 9 *Minnesota*: Each agency is required to review its own regulations every year for obsolete rules.
 - 10 *Ohio*: All regulations are reviewed by the committee every five years for obsolete rules.

- 11 *Ohio*: Each agency can review its own regulations and delete obsolete rules as it sees fit.
- 12 *Pennsylvania*: Agencies review their own rules to look for obsolete rules that should be deleted.
- 13 *Utah*: Each agency is required to review its own regulations every five years for obsolete rules.
- 14 *Virginia*: The exact process the Attorney General follows in reviewing existing rules is governed by executive order, so it may change slightly with each administration. However, the Attorney General is only given statutory authority to review rules to ensure they fall within the agency's statutory authority.
- 15 *Virginia*: The Governor may require agencies to review their existing regulations, but this is not automatic.
- 16 *Virginia*: The exact process the Governor follows in reviewing existing rules is governed by executive order, so it may change slightly with each administration. However, the Governor only reviews rules to ensure that they are necessary, clearly written and easy to understand.

The Power to Bar Adoption of Rules

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
Model APA*				legislature as a whole		x
Alabama	x ¹					
Alaska			x ²	legislature as a whole ³	Lt. Governor ⁴	
Arizona			x ⁵		Council ⁵	
Arkansas				legislature as a whole ⁶		
California		Office of Admin Law				
Colorado ⁷						
Connecticut	x					
Delaware						
Florida		Division of Admin Hearings		legislature as a whole ⁸	Dept. of State ⁹	
Georgia				legislature as a whole ¹⁰		x ¹¹
Hawaii						x
Idaho				legislature as a whole ¹²		
Illinois	x ¹³			legislature as a whole ¹³		
Indiana			x	legislature as a whole ¹⁴		x
Iowa	x ¹⁵			legislature as a whole ¹⁶		x ¹⁷
Kansas						
Kentucky				legislature as a whole ¹⁸		
Louisiana	x ¹⁹			legislature as a whole ²⁰		x
Maine				legislature as a whole ²¹		
Maryland	x ²²					
Massachusetts					Office of Reg. Review	
Michigan				legislature as a whole ²³		
Minnesota	x ²⁴		x ²⁵			x
Mississippi						
Missouri	x ²⁶			legislature as a whole ²⁷		
Montana						x

	Legislative Committee	Independent Review	Attorney General	Other Legislative Entity	Other Executive Entity	Governor
Nebraska			X			X
Nevada	X ²⁸			legislature as a whole		
New Hampshire				legislature as a whole ²⁹		
New Jersey				legislature as a whole ³⁰		
New Mexico						
New York		Gov's Office of Reg. Rev. ³¹				
North Carolina				legislature as a whole		
North Dakota	X		X			X ³²
Ohio						
Oklahoma				legislature as a whole ³³		X ³⁴
Oregon						
Pennsylvania		IRRC		legislature as a whole ³⁵		
Rhode Island						
South Carolina				legislature as a whole ³⁶		
South Dakota	X ³⁷					
Tennessee	X ³⁸		X ³⁹			
Texas						
Utah				legislature as a whole ⁴⁰		
Vermont						
Virginia	X⁴¹			legislature as a whole⁴²		X⁴³
Washington	X ⁴⁴					X
West Virginia				legislature as a whole ⁴⁵		
Wisconsin	X ⁴⁶			legislature as a whole		
Wyoming				legislature as a whole ⁴⁷		X ⁴⁸

The Power to Bar Adoption of Rules

(In theory, all state legislatures have the power to “veto” a rule by passing a bill that is approved by a majority vote in both houses of the legislature and signed by the Governor; however, some states have chosen to explicitly state that the legislature has such a power.)

Footnotes

- * The Model APA allows the legislature as a whole to pass a bill that voids an agency rule in whole or in part. The Governor may void or suspend all of or a portion of a rule by executive order. He may also put an end to an agency’s rulemaking process at any time.
- 1 *Alabama*: The Committee power to veto a rule must be approved by the legislature as a whole.
 - 2 *Alaska*: The Attorney General must sign off on legislative review before a rule becomes effective. Approximately 25 percent are returned to the agency for changes.
 - 3 *Alaska*: The legislature as a whole can only bar adoption of a rule by passing a bill, which is subject to the Governor’s veto.
 - 4 *Alaska*: The Lt. Governor can return a rule to the agency if it does not faithfully execute the law or respond to legislative comments.
 - 5 *Arizona*: Both the Attorney General and the Council can return a rule to the agency if the rule does not meet statutory criteria.
 - 6 *Arkansas*: The legislature can only bar adoption of a rule by passing a bill under normal circumstances. They do not have a veto power.
 - 7 *Colorado*: All rules automatically expire at a specified time unless they are allowed to continue by an act of the legislature. This is done by yearly rule review bill that must be passed by both houses of the legislature and be signed by the Governor. If the legislature does not want a rule to continue, it is included in a section of the bill that lists rules that will be allowed to expire.
 - 8 *Florida*: The legislature as a whole can only bar adoption of a rule by passing a bill, which is subject to the Governor’s veto.

- 9 *Florida*: The Department of State is directed to reject a rule if the agency has not responded to comments made by the public.
- 10 *Georgia*: The legislature can veto a rule by a two-thirds vote in each house to approve the resolution.
- 11 *Georgia*: The Governor only sees a rule if the resolution to veto does not pass both houses of the legislature, and he can choose whether to veto or approve the rule.
- 12 *Idaho*: The legislature can reject, amend or modify pending rules if it finds that they do not reflect legislative intent. This is done by way of a concurrent resolution. By law, all rules expire automatically unless the legislature extends them by statute.
- 13 *Illinois*: The Joint Committee on Administrative Rules can temporarily bar a rule from becoming effective. The General Assembly must pass a joint resolution for the prohibition to become permanent.
- 14 *Indiana*: The legislature as a whole may pass a bill to veto a rule.
- 15 *Iowa*: The legislative committee may write an objection to any rule, which places the burden on the agency to prove the validity of the rule to the court, and it may also delay the effective date of a rule until review by the entire legislature.
- 16 *Iowa*: The legislature can rescind any rule by joint action of the two houses of the legislature.
- 17 *Iowa*: The Governor may write an objection to any rule, which places the burden on the agency to prove the validity of the rule to the court, and he may also rescind any rule within the first 70 days after it takes effect.
- 18 *Kentucky*: If the General Assembly fails to adopt a rule as a statute, the rule will automatically expire at the end of the legislative session.
- 19 *Louisiana*: The Governor can override the legislative committee's veto of a rule.
- 20 *Louisiana*: The legislature may suspend, amend, or repeal a rule, and the Governor cannot override that decision.

- 21 *Maine*: The legislature must pass a bill, which is subject to the Governor's veto, to approve or bar adoption of a rule.
- 22 *Maryland*: If the legislative committee votes to oppose adoption of a rule, the rule may not take effect unless the Governor approves it.
- 23 *Michigan*: In order to bar adoption of a rule, the legislature must pass a bill, which is subject to the Governor's veto.
- 24 *Minnesota*: The legislative committee can delay adoption of a rule until the end of the legislative session.
- 25 *Minnesota*: The Attorney General may veto emergency rules if they do not conform with current law.
- 26 *Missouri*: The Committee can delay adoption of a rule for 30 days.
- 27 *Missouri*: The legislature as a whole can disapprove a rule by joint resolution, or it can choose to override the rule by passing a bill.
- 28 *Nevada*: The Committee may suspend a rule until the next legislative session.
- 29 *New Hampshire*: The legislature may bar adoption of a rule by passing a joint resolution, which is subject to the Governor's veto.
- 30 *New Jersey*: The legislature can only bar adoption of rules by concurrent resolution if the rule is inconsistent with the legislative intent of the statute it is meant to implement.
- 31 *New York*: The Governor's Office of Regulatory Review does not have the power to veto emergency rules.
- 32 *North Dakota*: The Governor has the power to veto emergency rules, but he cannot veto other rules.
- 33 *Oklahoma*: The legislature can disapprove of a rule by either a concurrent resolution or a joint resolution.
- 34 *Oklahoma*: The Governor must approve a rule, or it is considered to be disapproved and is no longer effective.

- 35 *Pennsylvania*: The legislature can disapprove a rule by a concurrent resolution, which is subject to the Governor's veto.
- 36 *South Carolina*: The legislature can bar adoption of a rule by way of a joint resolution, which is subject to the Governor's veto. It has 120 days to act, or the rule automatically goes into effect.
- 37 *South Dakota*: The legislative committee can only bar the adoption of rules that are found to be outside of the scope of the agency's authority or unconstitutional. To bar adoption of a rule, the committee requires a minimum three-fourths majority.
- 38 *Tennessee*: The legislative committees can delay the effective date of a rule for up to 60 days.
- 39 *Tennessee*: The Attorney General can reject rules which he determines to be illegal under current law or which fail to meet statutory criteria for adoption.
- 40 *Utah*: Unless reauthorized by statute, the rules automatically expire no more than one year after they were promulgated. By not reauthorizing a rule, the legislature is in effect barring its adoption.
- 41 *Virginia*: The legislative committee can suspend the adoption of a rule for a period of time with the Governor's approval.
- 42 *Virginia*: If the legislature passes a bill that is signed by the Governor, the agency rule that was suspended by the legislative committee will not go into effect.
- 43 *Virginia*: The Governor may suspend the effective date of a rule temporarily.
- 44 *Washington*: The Committee may suspend a rule with the Governor's approval.
- 45 *West Virginia*: The legislature can bar adoption of a rule by passing a bill, which is subject to the Governor's veto.
- 46 *Wisconsin*: The legislative committee can postpone the adoption of a rule, but it cannot permanently bar the rule's adoption.
- 47 *Wyoming*: The legislature may enact a legislative order that prohibits the enactment of a rule.

48 *Wyoming*: The Governor may veto a rule in whole or in part.