



# EMPOWERING THE GENERAL ASSEMBLY TO PROVIDE FOR LEGISLATIVE COMMITTEE REVIEW AND APPROVAL OF STATE AGENCIES' ADMINISTRATIVE RULES

## ISSUE NUMBER 1

(Referred to the People by the Arkansas General Assembly – 2014)

**POPULAR NAME:** An amendment empowering the General Assembly to provide for legislative committee review and approval of state agencies' administrative rules.

**BALLOT TITLE:** An amendment to the Arkansas Constitution providing that administrative rules promulgated by state agencies shall not become effective until reviewed and approved by a legislative committee of the General Assembly.

### What is being proposed?

Issue 1 would change the Arkansas Constitution to allow state senators and representatives to pass future laws that give legislative committees the right to review and approve state agency administrative rules before the rules could go into effect.

### Why is this issue on the ballot?

Arkansas senators and representatives want to provide a committee of legislators the legal authority to approve state agency rules. Arkansas Legislative Council committee members currently review state agency rules but Arkansas Supreme Court and Attorney General opinions have said legislators do not have the legal authority to approve rules before they go into effect, but they are allowed to review them for informational purposes. According to Arkansas legal opinions and scholars, voting to approve or disapprove state agency rules would violate the state Constitution's requirement for separation of powers among the state's legislative branch, executive branch and judicial branch. However, legislators believe the current practice gives the executive branch, or state agency leaders, more power than what the state Constitution intends.

Legislators have proposed laws and constitutional amendments in previous years to give the Arkansas Legislative Council more oversight of state agency rules, but this is the first time the issue has been put on the ballot for voters to decide.

### How did this issue make it to the ballot?

Arkansas legislators voted to put Issue 1 on the 2014 general election ballot. State legislators have the right to include up to three constitutional amendments on the general election ballot. Constitutional amendments require the approval of a majority of voters in a statewide election.

## General Questions

### What is the General Assembly?

The term "General Assembly" refers to the legislative branch of Arkansas' government, or the 35 state senators and 100 state representatives.

### What are "administrative rules?"

The proposed amendment does not define "administrative rules." However, current state law known as the Arkansas Administrative Procedure Act defines a "rule" as "an agency statement of general applicability and future

effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of an agency and includes, but is not limited to, the amendment or repeal of a prior rule.” Administrative rules specify how an agency operates to carry out its responsibilities.

Examples of state agency administrative rules include contracting procedures, licensing of electrical inspectors and state Medicaid coverage policies, among many others. State agency administrative rules can be found online at the Secretary of State’s website, [www.sos.arkansas.gov/rules\\_and\\_regs/index.php/rules/search/new](http://www.sos.arkansas.gov/rules_and_regs/index.php/rules/search/new).

### **How are administrative rules currently reviewed and approved?**

State agencies are required to give 30 days’ public notice of any intentions to change or create a rule, and to give people the opportunity to comment on the proposed rule. Once this process is completed, agencies submit any final rule changes to the Bureau of Legislative Research. The Bureau of Legislative Research acts as staff for all legislators. The staff studies administrative rules and gives reports to the Arkansas Legislative Council, a committee of state legislators.

The Legislative Council typically refers pending changes to its 22-member Administrative Rule and Regulation Review Subcommittee. The subcommittee of legislators can ask state agency administrators questions, ask for clarifications or make recommendations to administrators. The committee does not have the legal authority to prevent a rule from going into effect but state agency administrators typically work with legislators on any requested changes. Legislators do have the ability to alter existing administrative rules by proposing and passing additional legislation at a later date.

### **What state agencies would be affected by the proposed amendment?**

The proposed amendment does not define or specify what state agencies would be affected by its passage. The law setting up the Arkansas Legislative Council, which currently reviews administrative rules, defines a “state agency” as “any office, board, commission, department, council, bureau, or other agency of state government having authority by statute enacted by the General Assembly to promulgate or enforce the administrative rules and regulations.”

**The following statements are what supporters and opponents have made public either in media statements, campaign literature, on websites or in interviews with Public Policy Center staff. The University of Arkansas System Division of Agriculture does not endorse or validate these statements.**

### **What do supporters say?**

- Legislators would be able to make sure that state agency rules follow the intent of the law that the rules are trying to implement.
- Legislators would have final say over new rules and regulations before they go into effect instead of administrators who are not elected by the people.
- Legislators would not have to wait until the next legislative session to make changes to rules or reject rules that they believe could cause “a painful situation for anyone involved or impacted.”

### **What do opponents say?**

- The amendment would disrupt the separation of powers between legislators and day-to-day administrators who are charged with carrying out state law and serve the needs of Arkansans.
- Approval by the General Assembly would make the process to establish rules or change rules more difficult and time consuming while legislators educate themselves about a complicated legal or technical issue in order to approve or disapprove the rule.
- A few legislators could block implementation of a new law approved by the General Assembly by refusing to accept rules guiding how the law would be implemented.

### **If passed, when would the legislation take effect?**

If approved, the legislation would go into effect 30 days after the election.

### **What does a “FOR” vote mean?**

A **FOR** vote means you want to change the law and give state senators and representatives the constitutional authority to pass laws requiring legislative review and approval of state agency rules.

## What does an "AGAINST" vote mean?

An **AGAINST** vote means you do not want to change the law.

## Where can I find more information?

A complete version of the legislative bill can be found at [www.sos.arkansas.gov/elections/Documents/Initiatives%20and%20Referenda/SJR7.pdf](http://www.sos.arkansas.gov/elections/Documents/Initiatives%20and%20Referenda/SJR7.pdf).

For additional information please visit the University of Arkansas System Division of Agriculture's Public Policy Center website at [www.uaex.edu/ppc](http://www.uaex.edu/ppc) or contact your county Cooperative Extension Service office.

Voter registration information and election information can be obtained through the Arkansas Secretary of State's office by calling 501-682-1010 or visiting [www.sos.arkansas.gov](http://www.sos.arkansas.gov).

## Exercise your voting privilege.

We live in a democratic society where voting is a privilege of citizenship. Democracy works best when informed citizens exercise their voting privilege. Please vote.

The deadline to register to vote in the General Election is Oct. 6, 2014.

Early voting begins Oct. 20, 2014. Election Day is Nov. 4, 2014.

Absentee ballots can be requested from county clerk offices beginning Sept. 19, 2014.

**The following is the proposed constitutional amendment as it will appear on the state's November General Election ballot.**

## **CONSTITUTIONAL AMENDMENT REFERRED TO THE PEOPLE BY THE GENERAL ASSEMBLY**

### **Issue No. 1 (Popular Name)**

AN AMENDMENT EMPOWERING THE GENERAL ASSEMBLY TO PROVIDE FOR LEGISLATIVE COMMITTEE REVIEW AND APPROVAL OF STATE AGENCIES' ADMINISTRATIVE RULES.

### **Ballot Title**

AN AMENDMENT TO THE ARKANSAS CONSTITUTION PROVIDING THAT ADMINISTRATIVE RULES PROMULGATED BY STATE AGENCIES SHALL NOT BECOME EFFECTIVE UNTIL REVIEWED AND APPROVED BY A LEGISLATIVE COMMITTEE OF THE GENERAL ASSEMBLY.

**FOR**

**AGAINST**

The Public Policy Center is evaluating its ballot education program and invites you to participate in the evaluation by completing a survey available at [https://uaex.co1.qualtrics.com/SE/?SID=SV\\_3vAqtmkFseCCLPL](https://uaex.co1.qualtrics.com/SE/?SID=SV_3vAqtmkFseCCLPL). This link is case sensitive, so please enter the weblink as it appears. Your participation is voluntary and anonymous. You will not be asked how you intend to vote. If you have any questions about this survey, please contact Kristin Higgins at 501-671-2160.

**Conflict of Interest:** The University of Arkansas System Division of Agriculture, including the Cooperative Extension Service and Public Policy Center, is a recognized unit of the University of Arkansas System and subject to rules of the Arkansas Department of Higher Education. It also partners with other state agencies for specific educational programs. Any legislation affecting these agencies has the potential to impact the University of Arkansas System Division of Agriculture. We are obligated to divulge potential conflicts of interest and to recognize their influence on the educational programs and material we produce. We are committed to full disclosure and open recognition of our potential for bias. We strive to present Arkansas citizens with a fair and balanced representation of the issues brought to the ballot and welcome any constructive criticism of that effort.

The University of Arkansas Division of Agriculture gives permission for individuals or organizations to copy and/or reproduce this fact sheet. The University of Arkansas Division of Agriculture is to be appropriately cited as the source, and the user will refrain from altering the content in any way that might be construed to suggest that the Extension Service is a supporter or opponent of the issue.

Printed by University of Arkansas Cooperative Extension Service Printing Services.

The University of Arkansas Division of Agriculture offers its programs to all eligible persons regardless of race, color, sex, gender identity, sexual orientation, national origin, religion, age, disability, marital or veteran status, genetic information, or any other legally protected status, and is an Affirmative Action/Equal Opportunity Employer.

FSPPC312-9-2014N