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## Government Operations & Elections Committee

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### HJR 4204

**Brief Description:** Amending the Constitution to require legislative approval of certain agency rules.

**Sponsors:** Representatives Manweller, Johnson, Short, Klippert, Kristiansen, Vick, Smith, Hargrove, Shea and Fagan.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Proposes an amendment to the state's Constitution requiring legislative approval of certain agency rules.</li></ul>
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**Hearing Date:** 1/31/13

**Staff:** Jasmine Vasavada (786-7301).

**Background:**

Agency Rulemaking

Administrative agency powers may be expressly stated in statute or may be implied from statutorily-mandated duties. An administrative agency authorized or required to take some action has the implied authority to take those actions that are lawful and necessary to carry out the granted authority or to satisfy the statutory requirement. This "implied authority" of state agencies can be limited by constitutional or statutory conditions or restrictions.

Administrative agencies may be granted statutory authority to promulgate "rules," defined generally by the Administrative Procedure Act (APA) to include any agency orders, directives or regulations of general applicability that may impose penalties or sanctions, establish standards or qualifications, or relate to benefits conferred by law. Agency rules may also specify procedures

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for agency actions or hearings. The APA establishes procedural requirements for rulemaking, including public notice and opportunity to comment.

Agency rules that are within statutory intent and enacted in accordance with the APA have the force and effect of law. Agency issuances that are being used as rules but that have not been adopted in accordance with the APA are invalid.

#### Amending the State Constitution.

The state Constitution provides a method for the adoption of amendments to the Constitution. In order to amend the Constitution, a joint resolution must be passed by a two-thirds majority of both houses of the Legislature. To be enacted, the proposed amendment must be placed on the next general election ballot and must be approved by a simple majority of the voters.

The Constitution requires two methods of publicity for proposed constitutional amendments. The first is a requirement that the Secretary of State send a copy of the proposed amendment, with arguments for and against the proposal, to every residence in the state. The second is a requirement that notice of the proposed amendment be published in every legal newspaper in the state at least four times during the four weeks preceding the election.

#### **Summary of Bill:**

An amendment to Article II of the Constitution will be submitted to the voters at the next general election for their approval and ratification or rejection. If approved by a simple majority of voters, the amendment would limit substantive rulemaking by state agencies, preventing such rules from taking effect until a majority of the members of the house and senate vote in favor of a joint resolution or statute accepting the rule.

The constitutional amendment submitted to the voters will state the following:

“Any adopted agency rule which would create permanent substantive provisions of law, the violation of which subjects a violator to a penalty or sanction, or which would establish, alter, or revoke qualifications or standards with respect to a license or permit, or which would create a new policy or make significant changes to any policy or regulatory program takes effect only after a majority of the members elected to each house of the legislature vote in favor of a joint resolution or statute accepting the rule.”

Notice of the proposed amendment will be published in every legal newspaper in the state at least four times during the four weeks preceding the election.

**Appropriation:** None.

**Fiscal Note:** Not requested.